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No. 92-

In the

Supreme Court of the United States

OCTOBER TERM, 1992

DISTRICT OF COLUMBIA,
Petitioner,

v.

THOMAS HANSFORD AND MARY DELL HANSFORD,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI

JOHN PAYTON,
Corporation Counsel

CHARLES L. REISCHEL,
Deputy Corporation Counsel
Appellate Division

*LUTZ ALEXANDER PRAGER,
Assistant Deputy Corporation Counsel

Office of the Corporation Counsel
Room 305, District Building
Washington, D.C. 20004
Telephone: (202) 727-6252

**Counsel of Record*

QUESTION PRESENTED

Whether a state's exercise of judicial authority over a governmental function that Congress directed the District of Columbia to perform as its agent, on United States land over which the state has ceded all jurisdiction, violates the exclusive jurisdiction conferred on Congress by Article I, § 8, C1. 17, of the Constitution.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	3
1. The federal enclave	3
2. Proceedings at the trial level	4
3. Proceedings on appeal	5
REASONS FOR GRANTING THE WRIT	7
1. Article I, § 8, Cl. 17, is a complete shield against state interference in governmental activities on federal property.	9
2. Congress has made the District a beneficiary of the protection of Article I, § 8, Cl. 17.	12
3. Article I, § 8, Cl. 17, protection includes immunity from the jurisdiction and coercive powers of state courts.	15
CONCLUSION	18

TABLE OF AUTHORITIES

CASES

Arlington Hotel Co. v. Fant, 278 U.S. 439 (1929)	10
Dahn v. District of Columbia, 865 F.2d 1257 (4th Cir. 1988) (unpublished; text on WESTLAW)	9
District of Columbia v. John R. Thompson Co., 346 U.S. 100 (1953)	12-13
Evans v. Cornman, 398 U.S. 419 (1970)	6, 11, 15-16
Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525 (1885)	10, 11, 13
Great Northern Life Ins. Co. v. Read, 322 U.S. 47 (1944)	17
Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473 (1981)	6, 15
Howard v. Commissioners of Sinking Fund, 344 U.S. 624 (1953)	10, 11

TABLE OF AUTHORITIES (continued)

	Page
James v. Dravo Contracting Co., 302 U.S. 134 (1937)	9
Long v. District of Columbia, 261 U.S. App. D.C. 1, 820 F.2d 409 (1987)	9
Mann v. District of Columbia, 742 F.2d 750 (3d Cir. 1984)	9
Martinez v. California, 444 U.S. 277 (1980)	5
Mitchell v. Forsyth, 472 U.S. 511 (1985)	8
Murray v. Joe Gerrick & Co., 291 U.S. 315 (1934)	10
Nevada v. Hall, 440 U.S. 410 (1979)	7, 8, 9, 16, 17
Nixon v. Fitzgerald, 457 U.S. 731 (1982)	8
Ohio River Contract Co. v. Gordon, 244 U.S. 68 (1917)	6, 16
Pennhurst State School and Hospital v. Halderman, 465 U.S. 89 (1984)	17
Phillips v. Baltimore City, 110 Md. 431, 72 A. 902 (1909)	5
Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc., 61 U.S.L.W. 4045 (U.S. Jan. 12, 1993)	8
Surplus Trading Co. v. Cook, 281 U.S. 647 (1930)	10, 12
United States v. City of Bellevue, 474 F.2d 473, (8th Cir. 1973), *cert. denied*, 414 U.S. 827 (1973)	11
United States v. Cornell, 25 F. Cas. 650 (No. 14,868) (C.C.D. R.I. 1805)	10
United States v. Juvenile Male, 939 F.2d 321 (6th Cir. 991)	10
United States v. McGee, 714 F.2d 607 (6th Cir. 1983)	11
United States v. Unzeuta, 281 U.S. 138 (1930)	10
Western Union Telegraph Co. v. Chiles, 214 U.S. 274 (1909)	10
Western Union Telegraph Co. v. Pennsylvania, 368 U.S. 11 (1961)	8

STATUTES

Constitution, Article I, § 8, Cl. 17	*passim*
Constitution, Article III, § 1	16
4 U.S.C. §§ 105-110	11

TABLE OF AUTHORITIES (continued)

	Page
16 U.S.C. § 457	11
18 U.S.C. § 13	11
26 U.S.C § 3305(d)	11
28 U.S.C. § 1257(a)	1
28 U.S.C. § 1346(b)	17
40 U.S.C. § 290	11
42 U.S.C. § 1983	4
43 U.S.C. §1333(a)(2)(A)	15
R.S. D.C. § 2, D.C. Code § 1-102(a)(1992 repl.)	9
Organic Act of 1878 for the District of Columbia, 20 Stat. 102, ch. 180.	14
Act of Mar. 2, 1909, 35 Stat. 717, ch. 250	13
Act of Aug. 8, 1909, 36 Stat. 122, ch. 7	14
Act of Mar. 4, 1913, 37 Stat. 939, 969-70, ch. 150	14
Act of Feb. 28, 1923, 42 Stat. 1358, ch. 148	14
Act of Feb. 28, 1923, 42 Stat. 1360, ch. 148	*passim*
Act of Apr. 18, 1930, 46 Stat. 218, ch. 186	14
Act of Dec. 23, 1963, § 1, Pub. L. 88-241, 77 Stat. 532, D.C. Code § 15-705 (1989 repl.)	4
District of Columbia Court Reform Act, Pub. L. 91-358, 84 Stat. 539 (1970)	4
Md. Session Laws of 1906, ch. 743, §§ 1-2	*passim*
Md. Session Laws of 1984, ch. 284, § 11	3
Md. Code, Art. 96, ed. note (1984 repl.)	3
Md. Code, State Government § 14-102(b) (1984 & 1992 supp.)	6, 2d
Md. Code, Courts and Judicial Proceedings §§ 6-101 to 6-103 (1989)	6, 1d, 2d

OTHER AUTHORITIES

A. Hamilton, FEDERALIST PAPERS, No. 81	16
J. Madison, FEDERALIST PAPERS, No. 43	9, 12

TABLE OF AUTHORITIES (continued)

	Page
4 J. Elliot. DEBATES ON THE FEDERAL CONSTITUTION (1876)	8
44 Cong. Rec. 4525-4526 (statements by Rep. Tawney) (1909)	13
H.R. Doc. No. 84, 61st Cong., lst Sess. (1909)	13-14

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI

The District of Columbia petitions for a writ of certiorari to review a decision of the Court of Appeals of Maryland.

OPINIONS BELOW

The decision of the Court of Appeals of Maryland is reported at 329 Md. 112, 617 A.2d 1057. A. 1a. Its grant of certiorari is reported at 321 Md. 709. 584 A.2d 708. The decision of the Court of Special Appeals of Maryland is reported at 84 Md. App. 301. 578 A.2d 844. A. 1b. The oral opinion by the Circuit Court for Prince George's County is unreported. A. 3c. Its judgment and corrected judgment dismissing the action against the District of Columbia are also unreported. A. 1c-2c.

JURISDICTION

The Maryland Court of Appeals judgment was entered January 14, 1993. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I. § 8, of the Constitution:

The Congress shall have Power * * *

* * *

[C1. 17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings[.]

Act of Feb. 28, 1923, 42 Stat. 1360, ch. 148:

The Commissioners of the District of Columbia are authorized and directed to acquire a site for a home and school for feeble-minded persons, said site to be located in the District of Columbia or in the State of Maryland or in the State of Virginia, and to erect thereon suitable buildings at a total cost not exceeding $300,000, of which not more than $38,000 shall be expended for a site, and toward said purpose there is reappropriated the sum of $100,000 contained in the District of Columbia Appropriation Act for the fiscal year 1923 toward the erection of suitable buildings for a home and school for feeble-minded persons, to be available immediately. If the land proposed to be acquired is within the District of Columbia and the same can not be acquired by purchase at a price satisfactory to the commissioners, they are authorized to condemn the same under the provisions of chapter 15 of the Code of Law for the District of Columbia. If the land proposed to be acquired is without the District of Columbia and can not be purchased at a satisfactory price, the Attorney General of the United States, at the request of the Commissioners of the District of Columbia, shall institute condemnation proceedings to acquire such land as may be selected for said site either in the State of Maryland or in the State of

Virginia in accordance with the laws of said States, the title of said land to be taken directly to and in the name of the United States, but the land so acquired shall be under the jurisdiction of the Commissioners of the District of Columbia as agents of the United States * * *.

Maryland Session Laws of 1906, ch. 743, §§ 1-2:[1]

1. *Be it enacted by the General Assembly of Maryland*, That the consent of the State of Maryland is hereby given in accordance with the seventeenth clause, eighth section of the first Article of the Constitution of the United States, to the acquisition by the United States by purchase, condemnation or otherwise of any land in this State required for sites for custom houses, courthouses, postoffices, arsenals or other public buildings whatever, or for any other purposes of the government.

2. That exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State, but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands.

Other Maryland statutes appear in the appendix. A. ld.

STATEMENT OF THE CASE

1. *The federal enclave.* At the direction of Congress, the United States purchased about 827 acres of land in Anne Arundel County, Maryland, in 1923 for the use by the District of Columbia, using District appropriations to pay the purchase price. Act of Feb. 28, 1923, 42 Stat. 1360, ch. 148.

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[1] The law was at one time codified as Md. Code (1957) Art. 96, § 36. It is currently uncodified but remains in force. Md. Code (1957, 1984 repl.) Art. 96, ed. note. *See* Md. Session Laws of 1984, ch. 284, § 11: "AND BE IT FURTHER ENACTED, That Section(s) of the Annotated Code of Maryland be transferred, without amendment, to the Session Laws as follows: * * * Article 96 — United States. Section * * * 36 * * *."

When the land was bought, it was titled in the name of the United States and placed under the jurisdiction of the three commissioners of the District as "agents of the United States," as Congress had directed. At the time of the acquisition, Maryland law automatically ceded "exclusive jurisdiction" over any land acquired by the United States by purchase, condemnation, "or otherwise," reserving only the power to serve civil and criminal process on the land. Maryland Session Laws of 1906, ch. 743, §§ 1-2.

The District continues to use the Anne Arundel property, which remains titled in the name of the United States. One portion, known as Oak Hill, is used as a facility for juveniles transferred to the District's Department of Human Services for rehabilitation following an adjudication of delinquency. The District's juvenile justice system was enacted largely by Congress. Act of December 23, 1963, Pub. L. 88-241, 77 Stat. 532 (1963), *as amended* by District of Columbia Court Reform Act, Pub. L. 91-358, 84 Stat. 539, D.C. Code § 16-2301 *et seq.* (1989 repl.)

2. *Proceedings at the trial level.* In 1988, respondents Thomas Hansford, Sr., and Mary Dell Hansford filed a complaint against the District in the Circuit Court of Prince George's County, Maryland, following the murder of their son on August 16, 1987. The complaint also named as defendants Carl Sewanti Richardson, a juvenile who had escaped from Oak Hill and who had been convicted of felony murder in the killing of Thomas Hansford, Jr., and J.E. Neil Ollivierra, acting superintendent of Oak Hill in 1987.

The complaint alleged several causes of action against the District under Maryland law—wrongful death; negligence; respondeat superior as Mr. Ollivierra's employer—as well as a federal civil rights claim under 42 U.S.C. § 1983.

The complaint alleged that Richardson had been committed to Oak Hill after having been found delinquent for carrying a pistol without a license and for having previously

been found delinquent on other serious charges. Complaint, ¶¶ 9, 10. Richardson escaped from Oak Hill on June 11, 1987. *Id.*, ¶ 14. According to the complaint, Richardson participated in the murder of the younger Hansford some two months later about twenty-five miles from the enclave. *Id.*, ¶¶ 21-23. The complaint alleged that Richardson had escaped from Oak Hill at least once previously. *Id.*, ¶¶ 12-13. It also alleged that the District, by policy and custom, permitted detainees to be missing and failed to take corrective actions to obtain their return. *Id.*, ¶¶ 17-20. In particular, the complaint asserted, the District had not taken "appropriate precautions" to prevent Richardson's escape, *id.* ¶¶ 11, 13, 31, and had been negligent in failing to recapture him. *Id.*, ¶ 28.

The trial court dismissed suit against the District, basing its dismissal on Maryland venue statutes as interpreted by a 1909 Maryland Court of Appeals decision.[2] A. 3c-5c. The court denied the motion to dismiss the claims against Mr. Ollivierra pending further development of the facts. A. 5c. The court subsequently entered an order making dismissal of the action against the District a final judgment. A. 1c, *as amended by* A. 2c.

3. *Proceedings on appeal.* On appeal by the Hansfords, the District presented an additional basis for dismissal: the District's immunity under Maryland law and under Article 1, § 8, Cl. 17, of the Constitution. The District also argued that the complaint did not state a federal cause of action because, based on *Martinez v. California*, 444 U.S. 277 (1980), the District had no duty to protect the younger Hansford. The District made similar arguments with respect to the common law claims.

The Maryland Court of Special Appeals affirmed dismissal of the claims against the District but did not reach the District's constitutional or common law arguments. A. 1b-9b.

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[2] *Phillips v. Baltimore City*, 110 Md. 431, 72 A. 902 (1909).

Rather, relying on the 1906 Maryland session law ceding exclusive jurisdiction to the United States, as well as a more recent enactment (Maryland Code, State Government § 14-102(b) (1984 & 1992 supp.)), the court held that Maryland laws precluded Maryland courts from exercising jurisdiction over District activities on federal enclaves acquired before 1943. A. 7b.

The Court of Appeals of Maryland granted the Hansfords' petition for a writ of certiorari and reversed. A. 1a. It held that the District can be sued in Maryland courts for its alleged tortious conduct on a United States enclave in Maryland, just as any private individual may be sued. A. 14a-17a, 20a-23a. The court of appeals rejected both lower court holdings; it also rejected the District's argument that assertion of Maryland judicial control over the District for its governmental activities on a federal enclave acquired at Congress's direction would be an unconstitutional assertion of state control.

The court acknowledged that its holding meant that the District would be subject to suit in Maryland because served with process there and also under Maryland's longarm statute because the District transacts business, uses real property, and allegedly caused tortious injury in Maryland.[3] A. 14a-15a & n. 7.

While the court seemed to concede that the District's activities on the federal enclave could not be controlled by the executive and legislative branches of the Maryland government, it wrote that the federal enclave provided no protection from state judicial control in tort litigation. The court interpreted this Court's decisions as "up[holding] a state court's exercise of jurisdiction over personal injury and wrongful death actions arising from activities occurring on federal enclaves * * *." A. 16a-18a, *citing Gulf Offshore Co. v. Mobile Oil Corp.*, 453 U.S. 473 (1981); *Evans v. Cornman*, 398 U.S. 419 (1970); *Ohio River Contract Co. v. Gordon*, 244 U.S. 68 (1917).

[3] Md. Code, Courts and Judicial Proceedings §§ 6-101 to 6-103.

According to the court, the District is to be treated like a private party for purposes of personal jurisdiction and immunity even when its activities occur only on a federal enclave and are purely governmental: "In the context of this case * * * the District of Columbia is not the United States, is not carrying out a national purpose, and is not entitled to governmental immunity or supremacy of the United States." A. 21a. Maryland courts "need not recognize the governmental immunity of another state or of a municipal corporation * * * outside of Maryland." A. 22a, *citing Nevada v. Hall*, 440 U.S. 410 (1979).

REASONS FOR GRANTING THE WRIT

This dispute concerns the constitutional power of Congress to exercise its Article I, § 8, Cl. 17, power of "exclusive Legislation" over federal enclaves, by delegating governmental functions to the District of Columbia as Congress's agent, without thereby subjecting its agent to the jurisdiction and coercive power of state courts. For the first time in the seven decades since the Oak Hill enclave was created, a court has held that the District's exercise of those governmental functions is not shielded from state authority. That decision subverts congressional intent and congressional exercise of § 8, Cl. 17, power.

In 1923, Congress exercised its § 8, Cl. 17, power for the benefit of the District when it directed that land purchased for governmental use by the District in Maryland or Virginia be titled in the name of the United States and be under the jurisdiction of the commissioners of the District as "agents of the United States." Act of Feb. 28, 1923. The statutory language mirrored a previous congressional decision to protect the District from neighboring state assertions of jurisdiction. *See*, *infra*, at 13-14.

The Maryland Court of Appeals decision, by denying the District the protection that Congress granted in 1923, generates a substantial unresolved constitutional issue—

whether Congress can protect its agent from the civil jurisdiction of state courts when the agent acts on a federal enclave over which Congress has exclusive jurisdiction. The Maryland decision results in an intergovernmental dispute of first impression that this Court should resolve. *Cf. Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71, 79 (1961) (suggesting that dispute among states be submitted to the Court for "final, authoritative determination").[4] Since the dispute concerns a constitutional claim of immunity from the jurisdiction and coercive powers of state courts, the state courts should not be the final arbiters: " 'It is impossible that there should be impartiality when a party affected is to be judge.' " *Nevada v. Hall*, *supra*, 440 U.S. at 435 (Rehnquist, J., dissenting) (*quoting* W. Davie in 4 J. Elliot, DEBATES ON THE FEDERAL CONSTITUTION 159 (1876)).

The Maryland Court of Appeals decision subjects the District's governmental activities on a federal enclave to the laws, procedures, judges, and juries of another jurisdiction even though the District is expressly acting as "agent[ ] of the United States." It will require the District to justify its discretionary actions in rehabilitating children and youths, under the District's congressionally-enacted juvenile correctional laws, to judges and juries who will be able to substitute their judgments for those of the District's administrators. *See*, *infra*, at 15-17. In addition, the Court of Appeals' holding that the District's governmental operations on federal land give it a permanent "presence" in Maryland for jurisdictional purposes would apparently allow suit against the District in Maryland courts for injuries that have no relationship to the District's juvenile rehabilitation programs in Maryland. These problems are compounded because

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[4] A governmental claim of immunity "involves a claim to a fundamental constitutional protection." *Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.*, 61 U.S.L.W. 4045, 4047 (U.S. Jan. 12, 1993). Immediate appellate review is desirable to avoid subjecting public agencies and officials to litigation costs, risks of discovery, and trial. *See id.* (Eleventh Amendment immunity); *Mitchell v. Forsyth*, 472 U.S. 511 (1985)(qualified immunity); *Nixon v. Fitzgerald*, 457 U.S.731 (1982)(absolute immunity).

the Maryland Court of Appeals decision has obvious implications for the District's governmental activities in Virginia. There, the District runs a large prison complex on federal enclaves, also acquired under the authority of Article I, § 8, C1. 17. The District's presence on enclaves in Virginia is much larger than its presence on the Oak Hill enclave in Maryland.[5]

1. *Article I, § 8,. C1. 17. is a complete shield against state interference in governmental activities on federal property.* The 17th Clause of Article I, § 8, is the source of the congressional power both to establish the District of Columbia and to exercise exclusive jurisdiction over property purchased with the consent of the states, such as Oak Hill.[6]

The Framers' purpose in giving the central government exclusive jurisdiction was to preclude state interference with activities that Congress has authorized. As James Madison explained in FEDERALIST PAPERS, No. 43, "[t]he public money expended on such places, and the public property deposited in them, require that they should be exempt from the authority of the particular State." Clause 17 has since been interpreted as severing an enclave from the state entirely, "as

[5] The District recognizes that it may be sued in the Article I courts established by Congress for the District for torts committed elsewhere. *See*, R.S. D.C. § 2, D.C. Code § 1-102(a)(1992 repl.) (District defined as "a body corporate for municipal purposes, and may * * * sue and be sued, plead and be impleaded * * *"). In those cases, however, District law and immunity doctrines provide a measure of protection. The present case does not involve a claim against the District for activities outside a federal enclave, such as one arising out of an automobile accident on a state road, which could subject the District to state court jurisdiction. *See Nevada v. Hall*, 440 U.S. 410 (1979).

Federal claims against the District may, of course, be raised in federal courts but the District has been held not to be subject to federal court diversity jurisdiction. *Long v. District of Columbia*, 261 U.S. App. D.C. 1, 820 F.2d 409 (1987); *Mann v. District of Columbia*, 742 F.2d 750 (3d Cir. 1984); *Dahn v. District of Columbia*, 865 F.2d 1257 (4th Cir. 1988)(unpublished; text on WESTLAW).

[6] This Court has held that the phrase "other needful buildings" in § 8, C1. 17, encompasses all structures found to be necessary to accomplish the functions of the central government. *James v. Dravo Contracting Co.*, 302 U.S. 134, 143 (1937).

if it had been occupied by a foreign sovereign." *United States v. Cornell*, 25 F. Cas. 650, 653 (No. 14,868) (C.C.D. R.I. 1805) Story, J.); *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 533 (1885) (the federal jurisdiction over § 8, Cl. 17, enclaves is "exclusive of all state authority").[7] To the extent that states reserve the right to serve process in enclaves, it is only with respect to activities that occur outside the enclave, "to prevent the reservation from being a sanctuary for fugitive offenders." *United States v. Unzeuta*, 281 U.S. 138, 143 (1930).

Although there has been an evolution in this Court's interpretation of Clause 17, the Court has never permitted state interference with governmental activities on federal land:

> The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, *so long as there is no interference with the jurisdiction asserted by the Government.* * * * It is friction, not fiction, to which we must give heed.

Howard v. Commissioners of Sinking Fund, 344 U.S. 624, 627 (1953) (italics added). States may exercise some functions that have no impact on governmental activities on the enclaves, such as expanding city limits to permit taxation of income earned by employees working on enclaves, *id.*,

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[7] As a result, unless Congress has expressly legislated to the contrary, the states are powerless, on federal enclaves over which Congress has exclusive jurisdiction, to prosecute crimes, *States v. Unzeuta*, 281 U.S. 138 (1930); tax private property, *Surplus Trading Co. v. Cook*, 281 U.S. 647 (1930); impose civil penalties, *Western Union Teleoraph Co. v. Chiles*, 214 U.S. 274 (1909); enact legislation modifying private causes of action, *Murray v. Joe Gerrick & Co.*, 291 U.S. 315 (1934); *Arlington Hotel Co. v. Fant*, 278 U.S. 439 (1929); or exercise jurisdiction over delinquent acts by juveniles, *United States v. Juvenile Male*, 939 F.2d 321, 323-324 (6th Cir. 1991).

at 624,[8] and they may no longer deprive residents of enclaves of fundamental civil rights, such as the right to vote on matters which affect them in "numerous and vital ways." *Evans v. Cornman*, *supra*, 398 U.S. at 424. For its part, Congress has enacted legislation federalizing state law on the enclaves.[9]

Notwithstanding this evolution, neither the Court nor Congress has suggested that state instrumentalities can breach the jurisdictional boundary erected by § 8, Cl. 17, if state action would impair governmental functions on the federal enclave. Even when the United States has acquired property by means other than § 8, Cl. 17, so that its jurisdiction is not "exclusive," governmental activities on enclaves "will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed." *Fort Leavenworth R.R. Co. v. Lowe*, *supra*, 114 U.S. at 539.

Thus, § 8, Cl. 17, continues to have a prophylactic role, protecting the enclaves from disruptive assertions of state authority. While the Maryland Court of Appeals purported to acknowledge this role, its holding ignored the real restraints § 8, Cl. 17, places on the states. The Court of Appeals justified its holding that District governmental activities on a federal enclave are unprotected from the jurisdiction and coercive powers of the Maryland courts on two grounds: it held, *first*, that the District, unlike the federal government, cannot benefit from the constitutional provision any more than private citizens; and, *second*, that whatever protection § 8, Cl. 17, may afford against interference

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[8] However, annexation has been denied when it might create friction. *United States v. McGee*, 714 F.2d 607, 612-613 (6th Cir. 1983); *United States v. City of Bellevue*, 474 F.2d 473, 476 (8th Cir. 1973), *cert. denied*, 414 U.S. 827 (1973).

[9] *See, e.g.*, 4 U.S.C. §§ 105-110 (taxation; Buck Act); 16 U.S.C. § 457 (wrongful death); 18 U.S.C. § 13 (Assimilative Crimes Act); 26 U.S.C § 3305(d) (unemployment compensation); 40 U.S.C. § 290 (workers compensation).

by the executive and legislative branches of the state government, it affords none against interference by the judicial branch. Neither justification for asserting jurisdiction over the District for its activities on the Oak Hill enclave is sustainable.

2. *Congress has made the District a beneficiary of the protection of Article I, § 8, Cl. 17.* There is no textual basis in Article I, § 8, Cl. 17, for the proposition that the District, which was created under the authority of Clause 17 in order to prevent state interference with the Seat of the Government, is nevertheless answerable to the authority of a state when, at the direction of Congress and expressly as an agent of Congress, it carries out governmental responsibilities on a federal enclave. The District is clearly not subject to oversight by Maryland (including its judicial branch) for its activities in the District proper, which also was once part of that state. The constitutional language—that the national government has "like Authority" over enclaves as over the District—must surely include like protection for the District when it performs functions delegated by Congress on a federal enclave: "The necessity of a like [central] authority over forts, magazines, etc., established by the general government, is not less evident. * * * [T]hey should be exempt from the authority of the particular State." J. Madison, FEDERALIST PAPERS, No. 43. As the Court observed in *Surplus Trading Co. v. Cook*. 281 U.S. 647, 652 (1930): " 'Exclusive legislation' is consistent only with exclusive jurisdiction. It can have no other meaning as to the seat of government, and what it means as to that it also means as to forts, magazines, arsenals, dockyards, etc."

Although the District is not the federal government for most purposes, it is nevertheless a creation of the Constitution and the Congress, established to serve a national need. Under the Constitution, the Congress is the legislature for the District (as it is for the enclaves), exercising both national and "municipal" power. *See District of Columbia v. John R.*

Thompson Co., 346 U.S. 100, 108 (1953). The District is its creature, endowed with whatever powers Congress has delegated to it. *Id.* Thus, in the dichotomy of power with which § 8, Cl. 17, is directly concerned—between the national government and the states—the District is unmistakably national.

When it enacted the 1923 Act authorizing acquisition of the Oak Hill enclave, Congress, undoubtedly familiar with the prevailing law that federal jurisdiction on a § 8, Cl. 17, enclave is "exclusive of all state authority,"[10] deliberately gave the District complete protection from state interference, to the limits of its constitutional powers.

First, the plain language of the statute reflects the congressional intent. Title to the land was "to be taken directly to and in the name of the United States" and the commissioners were to exercise jurisdiction "as agents of the United States." Act of Feb. 28, 1923.

Second, Congress had previously deliberately adopted similar statutory language in order to protect the District from assertions of state jurisdiction for its activities on a federal enclave. In 1909, after Congress had authorized the District to acquire land in its own name for construction of a reformatory and workhouse,[11] and the District had negotiated the purchase of land in Virginia, the District and the Attorney General informed Congress that the District would be subject to the laws of Virginia if the land were titled in the name of the District. *See* 44 Cong. Rec. 4525-4526 (statements by Rep. Tawney). According to the Attorney General, purchase by the District would leave the District "without exclusive jurisdiction over the land. as the cession of jurisdiction and authority to purchase, granted to the United States by the States of Maryland and Virginia, respectively, do not apply to the Commissioners of the District." H.R. Doc. No. 84, 61st Cong., 1st Sess. (1909)

[10] *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 533 (1885).

[11] Act of Mar. 2, 1909, 35 Stat. 717, ch. 250.

at 2. Faced with this news, Congress amended the legislation to allow the District's purchase to be "taken directly to and in the name of the United States." Act of Aug. 8, 1909, 36 Stat. 122, ch. 7 (1909). Congress used similar language when it authorized the District to acquire additional property in Virginia in 1913;[12] in Maryland in 1923 (at Muirkirk);[13] and in Maryland in 1930.[14] Thus, although no reason was given in the legislative history of the 1923 Act for titling land in the name of the United States and for deputizing the District commissioners as "agents of the United States," it is most probable that Congress in 1923 (as in 1909) intended to use its Article I, § 8, Cl. 17, powers to delegate to the District commissioners its own "exclusive jurisdiction" over the enclave.

Third, in 1923 the District was wholly a creature of Congress. Congress was the District's only legislature, exercising close control over all of its activities. The commissioners were presidential appointees, confirmed by the Senate.[15] Congress therefore had every incentive to use its Article I, § 8, Cl. 17, powers to benefit and protect the District by giving it the same degree of immunity from state interference as the United States possesses.

None of the precedent from this Court which the Maryland Court of Appeals cited justifies state court exercise of jurisdiction over the District for governmental activities on land under the exclusive jurisdiction of the United States. That precedent either deals with private actors engaged in private or commercial activities on and off enclaves or ensures that

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[12] Act of Mar. 4, 1913, 37 Stat. 939, 969-70, ch. 150.

[13] Act of Feb. 28, 1923, 42 Stat. 1358, ch. 148.

[14] Act of Apr. 18, 1930, 46 Stat. 218, ch. 186.

[15] Organic Act of 1878 for the District of Columbia, 20 Stat. 102, ch. 180.

residents of enclaves lose none of their civil rights as a result of their residency.[16]

The Maryland Court of Appeals' attempt to equate the District with private actors cannot serve as a basis for ignoring the constitutional limitations on state power to exert authority over governmental actions on federal enclaves. Unlike private actors, moreover, the District receives no benefits from the State of Maryland that would justify subjecting it to state jurisdiction. It operates solely on federal property; its activities are governmental, not proprietary or commercial; it transacts no business and performs no work or services in Maryland proper; it derives no revenue from activities in the state; it does not depend on the protection of state law.

3. *Article I, § 8. Cl. 17, protection includes immunity from the jurisdiction and coercive powers of state courts.* Exercise of judicial power at the demand of individual claimants

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[16] In *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473 (1981), this Court allowed state courts to exercise jurisdiction over private disputes arising from activities on the outer continental shelf. Allowing state courts to hear such disputes under state law which had been federalized by the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333(a)(2)(A), the Court wrote, would not be incompatible with federal jurisdiction. Absent evidence that Congress had intended to make federal court jurisdiction exclusive, the usual presumption, that state courts enjoy concurrent subject-matter jurisdiction over federal causes of action, governed. *Id.* at 478. The question of whether state courts have jurisdiction over a governmental actor that is present only on an enclave was neither raised nor decided. In any event, the Court recognized that the presumption of concurrent state court jurisdiction could be rebutted "by unmistakable implication from legislative history, or by a clear incompatibility between state court jurisdiction and federal interests." *Id.* For reasons given in the text, above, the incompatibility here is obvious, as is the congressional intent to protect the District from state assertions of authority. Moreover, unlike private parties (*id.*, at 483, n. 12), the District cannot remove to federal court on diversity grounds. *See*, *supra*, at 10, n. 7 (District is not subject to diversity jurisdiction).

In *Evans v. Cornman*, 398 U.S. 419 (1970), a Fourteenth Amendment case, this Court held that residents of federal enclaves, who are affected

[Footnote continued on next page]

is as capable of interfering with governmental operations on an enclave as is exercise of a state's executive or legislative powers. The Court of Appeals decision contains no limiting principle. By making the enclave completely transparent for suits against the District, the Court of Appeals decision subjects the District to injunctions, other coercive writs, and punitive damages as if it were a private entity operating off the enclave.

Which court system is to exercise jurisdiction and coercive authority over a governmental actor has historically been considered a matter of utmost importance. Congress's Article III, § 1, power to establish "inferior" federal courts was deemed necessary because of fear that the "prevalency of a local spirit," coupled with the manner of appointment of state judges, could make the state judiciary too partial to, or "too little independent" of, parochial interests. A. Hamilton, FEDERALIST PAPERS, No. 81; *see*, *Nevada v. Hall*, *supra*, 440 U.S. at 434 (Rehnquist, J., dissenting) (before

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[Footnote continued from the previous page]
by the surrounding state in "numerous and vital ways," *id.* at 424, and who are treated as state residents in the census and congressional apportionment, could not be deprived of their right to vote in state and local elections. In the present case, no individual's constitutional right is at stake; neither would anyone be left without a remedy. At worst, an individual claiming injury will have to have his claims determined in a forum other than his first choice. Besides, as the Court explained in *Evans*, Congress can "restrict as well as extend the powers of the States" in federal enclaves. *Id.* For reasons stated in the text, Congress imposed such restrictions on state power in 1923 when it made the District its agent on United States property.

In *Ohio River Contract Co. v. Gordon*, 244 U.S. 68 (1917), this Court held that a government contractor could be sued in state court by an employee injured during work on a federal enclave. The contractor was subject to state court jurisdiction, not because of its activities on the enclave, but because of its presence outside the enclave' "[I]t is clear from the facts we have stated that the business carried on by the corporation was not confined to the land owned by the United States * * *. * * * This clearly constituted the doing of business within the state and subjected the corporation to the jurisdiction of the Kentucky courts." *Id.* at 72.

adoption of Constitution, "litigants were left to the state courts and to the provincialism that proved the bane of this country's earliest attempt at political organization"). In a similar vein, this Court has recognized that a state's "interest in immunity encompasses not merely *whether* it may be sued, but *where* it may be sued." *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 99 (1984) (italics in original; footnote omitted). For that reason, the Court has held that the Eleventh Amendment precludes suit against a state in federal court even if the state has waived its immunity to suit in its own courts. *See, e.g., Great Northern Life Ins. Co. v. Read*, 322 U.S. 47 (1944); *see, id.*, at 53-54 (noting that the "history of sovereign immunity and the practical necessity of unfettered freedom for government from crippling interferences require a restriction of suability to the terms of the consent, as to persons, courts and procedures"). Finally, when Congress enacted the Federal Tort Claims Act to permit tort suits to be brought against the United States, it considered the forum for such suits to be so significant that it made district court jurisdiction exclusive. 28 U.S.C. § 1346(b).

In short, state judicial control can be as intrusive as executive and legislative control. That is especially so if, here, such control allows impassioned local juries to judge the District's governmental activities, particularly activities which contain an element of danger to the community, such as operation of a juvenile facility or a prison; or if such control generally subjects the District to another state's long-arm jurisdiction as a consequence of its administration of a federal enclave as agent of the United States.

* * *

In 1923, Congress exercised its Article I, § 8, Cl. 17, powers to empower the District of Columbia to perform government functions as an agent of the United States on federal land, unimpeded by the surrounding state. The Maryland Court of Appeals' holdings, that state courts have jurisdiction over

the District solely by virtue of its presence on the Oak Hill enclave and that District activities there are subject to state court scrutiny, subverts Congress's express constitutional authority to exclude state instrumentalities from exercising jurisdiction over federal lands.

CONCLUSION

The petition should be granted.

Respectfully submitted.

JOHN PAYTON,
Corporation Counsel

CHARLES L. REISCHEL,
Deputy Corporation Counsel
Appellate Division

*LUTZ ALEXANDER PRAGER,
Assistant Deputy Corporation Counsel

Office of the Corporation Counsel
Room 305, District Building
Washington, D.C. 20004
Telephone: (202) 727-6252

**Counsel of Record*

APPENDIX

TABLE OF CONTENTS

	Page
Opinion of the Court of Appeals of Maryland (January 14, 1993)	1a
Opinion of the Court of Special Appeals of Maryland (September 5, 1990)	1b
Order of the Circuit Court for Prince George's County, Maryland, entering final judgment against the District of Columbia (December 4, 1989)	1c
Order of the Circuit Court for Prince George's County, Maryland, amending the final judgment to provide that it is for the District of Columbia (February 5, 1990)	2c
Excerpts from the proceedings in the Circuit Court for Prince George's County, Maryland, in which the Court announced that the case was dismissed as to the District of Columbia. (September 8, 1989)	5c
Other statutes	1d

In The

Court of Appeals of Maryland

No. 150

SEPTEMBER TERM, 1990

THOMAS T. HANSFORD, SR. et al.

v.

DISTRICT OF COLUMBIA

Murphy, C.J., Eldridge, Rodowsky, McAuliffe, Chasanow, Hinkel, J. William, (Specially assigned), JJ.

Opinion by *Eldridge, J.*

Filed: January 14, 1993

The principal issues in this case concern the authority of a Maryland court to exercise jurisdiction in a tort suit against the District of Columbia, where the District's allegedly tortious conduct occurred on a federal enclave within the State of Maryland, over which enclave the State had ceded "exclusive jurisdiction" to the United States.

In June 1987 Carl Sewanti Richardson escaped from the juvenile detention facility known as Oak Hill Youth Center, located near Laurel, in Anne Arundel County, Maryland. The facility is operated by the District of Columbia. During the time after his escape and before his recapture, Richardson killed Thomas T. Hansford, Jr., in Prince George's County, Maryland. Richardson was convicted in the Circuit Court for Prince George's County, on August 3, 1988, of felony murder.

On August 15, 1988, the decedent's parents, Thomas T. Hansford, Sr., individually and as personal representative

of the decedent's estate, and Mary Dell Hansford, instituted the present suit in the Circuit Court for Prince George's County against the District of Columbia, Mr. J. E. Neil Ollivierra, then Acting Superintendent of Oak Hill Youth Center, and Carl Sewanti Richardson. In their complaint, the plaintiffs alleged that the District of Columbia through its employees failed to "properly supervise and maintain custody and control" over Richardson and thereby negligently allowed him to escape from the Oak Hill Youth Center. It was also alleged that the District, by its employees at Oak Hill, was negligent in failing to "recapture [Richardson] in a timely manner." The District was alleged to be responsible, under the doctrine of respondeat superior, for the negligent acts of its employees.

Furthermore, the plaintiffs alleged that, at the time of Richardson's escape, the District of Columbia had a policy or custom of permitting escapees from the Oak Hill Youth Center to remain at large. The complaint stated that one of every three detainees was permitted to be missing from the facility. The plaintiffs argued that the District's negligent policy or custom of allowing Richardson to remain at large violated the decedent's civil rights by depriving him of his life without due process of law. The plaintiffs, therefore, claimed damages under 42 U.S.C. § 1983.

Finally, the complaint included an "assault and battery" count which applied only to the action against Richardson.

The plaintiffs, in asserting that the Circuit Court for Prince George's County could exercise jurisdiction in the case, relied on, *inter alia*, Maryland Code (1974, 1989 Repl. Vol.), §§ 3-902, 3-904, 6-101 and 6-103 of the Courts and Judicial Proceedings Article.[1] They also stated that they had complied with the

[1] Sections 3-902 and 3-904 are parts of the Wrongful Death Act. Section 6-101 provides that, "[f]or purposes of personal jurisdiction, venue, and service of process," any federal enclave or reservation is part of the State and county in which it is located and that the "personal jurisdiction and venue of" Maryland courts, "and the power to serve process of those courts," extends to persons on federal enclaves or reservations "to the fullest extent permitted by the Constitution and laws of the United States." Section 6-103 is part of the Long Arm Statute.

provision of District of Columbia law which requires that notice of intent to sue the District be filed within six months of the incident alleged. D.C. Code § 12-309 (1981).

The District filed, on the same day, both a motion to dismiss and an answer to the complaint. The motion to dismiss asserted, with regard to the District, a lack of jurisdiction over the person. The motion also claimed that Mr. Ollivierra was immune from suit and that the complaint failed to state a cause of action against either the District or Mr. Ollivierra.

Although the plaintiffs in their opposition to the motion to dismiss did not raise the issue, the circuit court, at the hearing on the motion to dismiss, sua sponte raised a question about the timeliness of the motion. Maryland Rule 2-322 provides in pertinent part as follows:

> "**PRELIMINARY MOTIONS**
>
> "**(a) Mandatory.** — The following defenses shall be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the person, (2) improper venue, (3) insufficiency of process, and (4) insufficiency of service of process. If not so made and the answer is filed, these defenses are waived.
>
> "**(b) Permissive.** — The following defenses may be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the subject matter, (2) failure to state a claim upon which relief can be granted, (3) failure to join a party under Rule 2-211, and (4) governmental immunity. If not so made, these defenses and objections may be made in the answer, or in any other appropriate manner after answer is filed."

Counsel for the District of Columbia and for Mr. Ollivierra told the court that he had filed the motion to dismiss prior to filing the answer. The docket entries, however, read as if the answer were filed first. The circuit court found that counsel had in fact filed the motion to dismiss before filing the answer.

The circuit court then heard arguments on the motion to dismiss. The attorney in the Office of the Corporation Counsel of the District of Columbia, who represented both the District and Mr. Ollivierra, contended that, under Maryland law, the circuit court lacked jurisdiction over the District of Columbia, a foreign municipal corporation. Counsel, relying on *Phillips v. Baltimore*, 110 Md. 431, 72 A. 902 (1909), argued that a municipal corporation can be sued only in the courts of the jurisdiction where it is situated. It was also claimed that Mr. Ollivierra was immune from suit because he was a public official engaged in discretionary duties.

The District and Mr. Ollivierra further argued that the complaint failed to state a cause of action because there was no special relationship between the plaintiffs and these two defendants giving rise to a special duty. They also maintained that there was no causal connection between the alleged negligence of these defendants and the death of Thomas T. Hansford, Jr., and that there was no basis in law for the § 1983 claim.

On September 8, 1989, the circuit court dismissed the action against the District of Columbia, holding that a municipal corporation could not be sued, in transitory actions, outside the jurisdiction in which it is located. The circuit court's holding was based entirely on *Phillips v. Baltimore City*, *supra*, 110 Md. 431, 72 A. 902, which involved venue principles and the construction of a venue statute.

The circuit court refused to dismiss any part of the action against Mr. Ollivierra. The court stated that more factual development was required before it could render a decision on Mr. Ollivierra's defense of governmental immunity. The court also held that more factual development was needed before it could rule on the arguments that Mr. Ollivierra and the District owed no duty to the plaintiffs, that there was no causal connection between the death and alleged negli-

gence of these defendants, and that there was no basis in law for the § 1983 claim.

The plaintiffs noted an appeal to the Court of Special Appeals on October 6, 1989. On December 4, 1989 the circuit court certified as final the judgment in favor of the District of Columbia. Rule 2-602(b).[2]

In its brief in the Court of Special Appeals, the District argued that it had complied with the filing requirements of Rule 2-322(a), and that the circuit court correctly held that, because the District was a municipal corporation, it could not be sued outside its boundaries. Although not raised in the circuit court, the District contended in the Court of Special Appeals that there was another rationale for affirming the dismissal of the complaint against the District. The District argued that Maryland's cession of exclusive jurisdiction over the land upon which Oak Hill Youth Center rests deprived the circuit court of its ability to exercise jurisdiction over acts and omissions occurring on that land. The District maintained that, although in 1943 Maryland expressly reserved jurisdiction over lands leased or ceded to the United States, this reservation expressly did not

> " 'affect the jurisdiction and authority of the State over land or persons, property, and transactions on land that the United States or its unit has acquired on or before May 31, 1943 to the extent that the

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[2] Although the plaintiffs filed their notice of appeal before the judgment was certified as final, Maryland Rule 8-602(e)(1)(D) provides:

> "If the appellate court determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed but that the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602(b), the appellate court may, as it finds appropriate, . . . if a final judgment was entered by the lower court after notice of appeal was filed, treat the notice of appeal as if filed on the same day as, but after, the entry of the judgment."

We will exercise this discretion and treat the plaintiffs' notice of appeal as if it had been filed on the same day as, but after, the certification as final of the judgment in favor of the District of Columbia.

> State ceded jurisdiction under . . . Chapter 743, §§ 2 and 3, of the Acts of the General Assembly of 1906.' "

(District's brief at 14, quoting, Code (1984, 1992 Cum. Supp.), § 14-102(b) of the State Government Article.)

The Court of Special Appeals affirmed the judgment, although for a different reason than that relied upon by the circuit court. *Hansford v. District of Columbia*, 84 Md.App. 301, 578 A.2d 844 (1990). The intermediate appellate court held that a Maryland court could not exercise jurisdiction over the District of Columbia in this case because the District's alleged negligence occurred on a federal enclave which was ceded prior to 1943.

The plaintiffs filed in this Court a petition for a writ of certiorari raising the following three issues (although in a somewhat different order): (1) whether the trial court erred in granting the District's "motion to dismiss due to lack of personal jurisdiction where" the District had allegedly filed the motion after filing its answer; (2) whether the trial court erred in holding that the District, as a municipal corporation, could not be sued outside of the jurisdiction in which it is located; (3) whether the Court of Special Appeals erroneously affirmed the trial court's dismissal of the complaint against the District on the ground that the trial court could not exercise jurisdiction where the District's alleged tortious conduct occurred on a federal enclave ceded prior to 1943. The District did not file a cross-petition or a conditional cross-petition for a writ of certiorari. Thereafter this Court granted the plaintiffs' petition, 321 Md. 709, 584 A.2d 708 (1991).

I.

The plaintiffs continue to insist in this Court that, because the docket entries state that the District's answer was filed before its motion to dismiss was filed, the District has waived its right to argue issues which must be raised in a preliminary

motion. As previously stated, Rule 2-322(a) requires that the defenses of lack of jurisdiction over the person, improper venue, insufficiency of process, and insufficiency of service of process, be made in a motion to dismiss before an answer is filed. If not so made, the right to assert these defenses is waived.

The District's counsel represented to the trial judge that the motion to dismiss was filed prior to the answer. The trial judge indicated that the order of entries on the docket does not necessarily reflect the order in which the documents were filed. The trial judge stated: "I'm not going to conclude that you have waived the right to raise the matters contained in the motion raising preliminary objection merely because the clerk in shuffling papers put one ahead of the other."

Assuming arguendo that the contemporaneous filing of the motion and the answer would not satisfy the requirement of Rule 2-322(a), the trial court's finding that the motion was filed first is not clearly erroneous. Moreover, we note that the trial court's conclusion is supported by the date and time stamps on the pleadings. The plaintiffs' argument that the District waived its right to assert the defense of lack of jurisdiction over the person is without merit.

II.

The District's sole "lack of jurisdiction" argument in the circuit court was that, as a matter of Maryland law, the District of Columbia may not be sued in a Maryland court for transitory actions because the District is a municipal corporation which may not be sued outside of the District of Columbia. The District's argument is based upon one case, involving venue principles and the construction of a Maryland venue statute, which supports the proposition that a Maryland municipal corporation can be sued only in the county where it is situated. *Phillips v. Baltimore City*, *supra*, 110 Md. 431, 72 A. 902.

Prior to *Phillips v. Baltimore City*, this Court in *Baltimore City v. Turnpike Co.*, 104 Md. 351, 65 A. 35 (1906), held that an action against Baltimore City, based on the City's alleged trespass upon the plaintiff's land located in Baltimore County, was properly brought in the Circuit Court for Baltimore County. Rejecting the City's assertion that the suit should have been brought in Baltimore City, the Court relied upon the principle that local actions should be brought in the jurisdiction where the land lies. *See Gunther v. Dranbauer*, 86 Md. 1, 6, 38 A. 33 (1897). In the *Turnpike Co.* case, the City's entire reliance in this Court was upon the rule, set forth in several out-of-state cases, that "a municipal corporation [can] be sued in its own Courts only, even in the case of a local action." 104 Md. at 351. This Court rejected the rule, stating (104 Md. at 357, 65 A. at 36):

> "We have been referred to no decision in this State, that holds that a municipal corporation should not be bound by the rules of law, which are applicable to other litigants and no sound reason can be given why they should be excepted. The contention of the appellant, if carried to its logical conclusion, would result in depriving municipalities in the State, which have no Courts, from suing or being sued . . . ."

Nevertheless, a few years later in *Phillips v. Baltimore City*, the Court did apply, in a transitory action against Baltimore City, the venue rule that a municipal corporation could be sued only in its own courts. 110 Md. at 436, 72 A. at 904. The Court held that this general rule was applicable to transitory actions in the absence of a statute modifying the rule. The *Phillips* Court limited the holding in *Baltimore City v. Turnpike Co.* to local actions only.

The *Phillips* Court then considered whether the venue statute relating to bringing suit against a corporation, which was then in effect, had changed this general rule. The Court held that the venue statute, which declared *inter alia* that a "corporation of this State" could be sued in any county

where it regularly transacted business,[3] did not apply to a municipal corporation. 110 Md. at 437, 72 A. at 905.

Phillips has no application to the present case. The rule that was applied in *Phillips* is that a Maryland municipality, sued in a Maryland court in a transitory action, should be sued where it is situated. The District of Columbia is not a Maryland municipal corporation and is not situated in a Maryland county. In the context of this case, it is a nonresident corporate defendant.[4] Adoption of the District's argument would lead to the adoption of a venue rule which would grant foreign municipal corporations the unique privilege of being immunized from suit in the State of Maryland.

The Supreme Court of Kansas addressed this issue in *Hillhouse v. City of Kansas City*, 221 Kan. 369, 373, 559 P.2d 1148, 1151 (1977), stating: "there is no sound reason why a foreign municipal corporation should be treated any differently from foreign private corporations." We agree with the Supreme Court of Kansas and hold that a foreign municipal corporation is subject to the same venue rules as any private corporation.

Phillips has no application to this case for another reason. In *Phillips*, this Court construed a venue statute which stated that a "corporation of this State may be sued in any county . . . where it regularly transacts business." This venue statute no longer exists. The comparable general venue statute now reads in pertinent part as follows (Code (1974, 1989 Repl. Vol.), § 6-201 of the Courts and Judicial Proceedings Article):

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[3] Ch. 240 of the Acts of 1908, later codified as Code (1957), Art. 23, § 62.

[4] As the Court pointed out in *Eck v. State Tax Comm. of Md.*, 204 Md. 245, 250, 103 A.2d 850, 853 (1954), when there is a nonresident defendant, Maryland venue restrictions are generally inapplicable and a transitory action can be brought wherever the nonresident defendant can be reached with process. *See also Alcarese v. Stinger*, 197 Md. 236, 244, 78 A.2d 651, 655 (1951).

> "[A] civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation."

Thus, with respect to suits where regular business is carried on, the broader term "defendant" is used to encompass persons and corporations. The District of Columbia is certainly a "defendant." The *Phillips* Court's analysis of whether the former venue statute concerning "corporations" included Maryland municipal corporations has little relevance to an action brought against the "defendants" under the present venue statute.

Even if the venue statute had not been changed, this Court in *Eck v. State Tax Comm. of Md.*, 204 Md. 245, 252, 103 A.2d 850, 854 (1954), pointed out that "the [venue] rule applied in the *Phillips* case . . . is not universal and has been subject to criticism . . . ." The court in *Eck* declined to apply the *Phillips* holding with respect to suits against public officials relating to the performance of their official duties. 204 Md. at 253-254, 103 A.2d at 854-855.

The majority of jurisdictions which have reassessed the issue reject the notion that a municipal corporation is not subject to the same venue rules as other corporations. *See, e.g., Cacho v. Superior Court*, 170 Ariz. 30, 32, 821 P.2d 721, 723 (1991); *Lawless v. Village of Park Forest South*, 108 Ill.App.3d 191, 195-196, 438 N.E.2d 1299, 1302 (1982); *Guy v. Pennsylvania R. Co.*, 87 N.E.2d 712, 714 (Ohio Ct. of App., Cuyahoga Cty., 1949); *City of Cushing v. Coryell*, 400 P.2d 174, 175-176 (Okl. 1965). *But see, Ex parte City of Birmingham*, 507 So.2d 471, 473-474 (Ala. 1987). Moreover, as previously discussed, this Court prior to *Phillips* had rejected the special venue rule for municipal corporations and had stated, in the context of venue principles, that a municipal corporation should be treated like any other litigant. *Baltimore City v. Turnpike Co., supra*, 104 Md. at 357, 65 A. at 36. In addition, there have been Maryland cases since

Phillips where, without discussion, a municipal corporation has been subjected to suit outside of its county's boundaries. *See, e.g., Alexander v. Montgomery County*, 87 Md.App. 275, 589 A.2d 563 (1991) (Montgomery County sued in the Circuit Court for Prince George's County).

We agree with the majority of jurisdictions which today reject the notion that a municipal corporation is exempt from the venue principles governing other corporations. Consequently, for several reasons, the District's reliance upon *Phillips v. Baltimore* is misplaced.

III.

The Court of Special Appeals held that the circuit court did not have jurisdiction over the District of Columbia because the allegedly tortious activities, giving rise to the suit against the District, occurred on a federal enclave which was acquired by the United States between the years 1906 and 1943. The land upon which Oak Hill Youth Center is situated was acquired in 1923 for governmental use by the District of Columbia. Act of February 29, 1923, ch. 148, 42 Stat. 1360.[5]

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[5] The land was acquired pursuant to a congressional directive, for use by the District of Columbia for municipal purposes. The directive provided (Act of February 29, 1923, ch. 148, 42 Stat. 1360):

> "The Commissioners of the District of Columbia are authorized and directed to acquire a site for a home and school for feebleminded persons, said site to be located in the District of Columbia or in the State of Maryland or in the State of Virginia, and to erect thereon suitable buildings . . . . If the land proposed to be acquired is without the District of Columbia and can not be purchased at a satisfactory price the Attorney General of the United States, at the request of the Commissioners of the District of Columbia, shall institute condemnation proceedings to acquire such land as may be selected for said site either in the State of Maryland or in the State of Virginia in accordance with the laws of said States, the title of said land to be taken directly to and in the name of the United States, but the land so acquired shall be under the jurisdiction of the Commissioners of the District of Columbia as agents of the United States . . . "

At the time of the acquisition of the land upon which Oak Hill Youth Center rests, Chapter 743, § 2, of the Acts of 1906, later codified as Maryland Code (1957), Art. 96, § 36, provided:

> "Exclusive jurisdiction in and over land so acquired by the United States shall be and the same hereby is ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State, but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands."

In 1943, the General Assembly limited any cession of jurisdiction over lands held by the United States to concurrent jurisdiction. Code (1984), § 14-102 of the State Government Article.

The Court of Special Appeals in its opinion stated that Maryland, between 1906 and 1943, " 'ceded exclusive jurisdiction to the United States for all purposes except service of process.' " *Hansford v. District of Columbia*, *supra*, 84 Md. App. at 306, 578 A.2d at 846, quoting 63 Att'y Gen. Ops. 332, 333 (1978); 61 Att'y Gen. Ops. 441, 446 (1976). The Court of Special Appeals appeared to view § 6-101 of the Courts and Judicial Proceedings Article and § 14-102 of the State Government Article as somewhat in conflict, and it attempted to reconcile the two statutes. Section 6-101 of the Courts and Judicial Proceedings Article provides:

> "**Definitions; jurisdiction as to federal land.**
>
> "(a) For the purposes of personal jurisdiction, venue, and service of process, the following terms have the meanings indicated:
>
> "(b) "County" includes any federal enclave, reservation, or land within the geographical limits of the county.
>
> "(c) "Resident" includes a person residing on a federal enclave, reservation, or land in the State or a county.

"(d) "State" includes any federal enclave, reservation, or land within the geographical limits of the State.

"(e) *Legislative intent.*—It is the intention of the General Assembly to extend the personal jurisdiction and venue of courts of the State and the power to serve process of those courts to any person on federal enclaves, reservations, or lands within the State to the fullest extent permitted by the Constitution and laws of the United States."

Section 14-102 of the State Government Article provides:

"(a) *In general.*—With respect to land that the United States or any of its units leases or otherwise holds in the State, the State reserves jurisdiction and authority over the land and over persons, property, and transactions on the land to the fullest extent that is permitted by the United States Constitution and that is not inconsistent with the governmental purpose for which the land is held.

"(b) *Previous grants.*—This section does not affect the jurisdiction and authority of the State over land or persons, property, and transactions on land that the United States or its unit has acquired on or before May 31, 1943 to the extent that the State ceded jurisdiction under:

* * *

"(4) Chapter 743, §§ 2 and 3, of the Acts of the General Assembly of 1906 . . . ."

The Court of Special Appeals concluded that, while "the legislature intended to 'extend jurisdiction . . . of courts of the state . . . to any *person* on federal enclaves . . . to the fullest extent permitted by the Constitution and laws of the United States,' it is apparent that it did not intend the extension to apply to '*transactions* on land that the United States . . . has acquired on or before May 31, 1943.' " *Hansford v. District of Columbia*, *supra*, 84 Md. App. at 308-309, 578 A.2d at 848 (emphasis added). Therefore, according to the intermediate appellate court, because Maryland had ceded exclusive jurisdiction to the United

States, the District of Columbia could not be subject to suit in a Maryland court based upon its activities at Oak Hill Youth Center.[6]

In our view, there is no conflict between § 6-101 of the Courts and Judicial Proceedings Article and § 14-102 of the State Government Article, and, therefore, there is no need to "reconcile" the statutes or adopt a strained construction of either. Furthermore, in dealing with the two statutes and the issues in this case, it is important to differentiate among the separate concepts of (1) a court's jurisdiction over the person, (2) a court's authority in civil cases to resolve disputes growing out of transactions occurring outside of the territorial jurisdiction in which the court is located, and (3) a state government's legislative, executive and administrative authority within its territorial limits.

Section 6-101 of the Courts and Judicial Proceedings Article deals entirely with personal jurisdiction, service of process, and venue. A Maryland court is clearly entitled to serve process on and exercise jurisdiction over the person of the District of Columbia under the circumstances of this case. Because a federal enclave is included in the definition of "State," § 6-101(d), and because of the activities conducted by the District of Columbia at the Oak Hill Youth Center in this State, the circuit court had the power to exercise jurisdiction over the "person" of the District of Columbia.[7]

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[6] There is nothing in the Court of Special Appeals' opinion which indicates that the result would have been different if a private, rather than a public, corporation had been sued based upon its activities on a federal enclave.

[7] Section 6-102 of the Courts and Judicial Proceedings Article provides:

> "(a) *Basis of personal jurisdiction.*—A court may exercise personal jurisdiction as to any cause of action over a person domiciled in, served with process in, organized under the laws of, or who maintains his principal place of business in the State.
>
> (b) *Exercise of jurisdiction on other basis.*—This section does not limit any other basis of personal jurisdiction of a court of the State."

[Footnote continued on next page]

We now turn to the holding of the Court of Special Appeals, namely that the cession of "exclusive" jurisdiction by the State of Maryland limits the authority of the courts of this State so that a Maryland court cannot exercise jurisdiction over " 'transactions on land that the United States . . . has acquired on or before May 31, 1943 . . .' " *Hansford v. District of Columbia, supra*, 84 Md. App. at 308-309, 578 A.2d at 848, quoting § 14-102(b) of the State Government Article.

Section 14-102(b) of the State Government Article deals entirely with the governing authority of the State of Maryland over enclaves ceded between 1906 and 1943. The section does not in any manner restrict the ability of courts to acquire in personam jurisdiction over persons and entities on federal enclaves. In fact, § 14-102(b) refers to Ch. 743 of

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[Footnote continued from the previous page]
The District of Columbia was served with process in the State of Maryland, and, in light of the District's activities within the State, this service conformed to the requirements of due process.

Alternatively, the District may be subject to suit in this State because of several of the acts enumerated in the Long Arm Statute, § 6-103 of the Courts and Judicial Proceedings Article. The District transacts business and performs work or service in the State, § 6-103 (b)(1); the District allegedly caused tortious injury in the State by an act or omission in the State, § 6-103(b)(3); the District uses real property in the State, § 6-103(b)(5).

As this Court has repeatedly stated, the purpose of the Maryland Long Arm Statute is to permit a Maryland court to exercise jurisdiction over the person to the full extent authorized by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Androutsos v. Fairfax Hospital*, 323 Md. 634, 637, 594 A.2d 574, 576 (1991); *Camelback Ski Corporation v. Behning*, 312 Md. 330, 342-343, 539 A.2d 1107, 1113, *cert. denied*, 488 U.S 849, 109 S.Ct. 130, 102 L.Ed.2d 103 (1988); *Curtis v. State*, 284 Md. 132, 395 A.2d 464 (1978); *Mohamed v. Michael*, 279 Md. 653, 370 A.2d 551 (1977); *Geelhoed v. Jenson*, 277 Md. 220, 352 A.2d 818 (1976); *Krashes v. White*, 275 Md. 549, 341 A.2d 798 (1975); *Harris v. Arlen Properties, Inc.*, 256 Md. 185, 260 A.2d 22 (1969). The District's activities on the federal enclave upon which Oak Hill Youth Center rests are sufficient to subject it to the jurisdiction of the Maryland courts.

the Acts of 1906 which excepted from the cession of jurisdiction "the service upon such sites of all civil and criminal process of the courts of this State." Consequently, there is no conflict between § 14-102(b) and § 6-101 of the Courts and Judicial Proceedings Article.

Section § 14-102(b) also does not purport to restrict the traditional authority of Maryland courts to resolve disputes between plaintiffs and defendants over whom in personam jurisdiction has been acquired, regardless of where the transaction giving rise to such disputes occurred. Section 14-102(b) simply purports to restrict the applicability of Maryland law and Maryland executive and administrative governmental authority over federal enclaves ceded prior to 1943. The District's argument, and the position of the Court of Special Appeals, "confuses the political jurisdiction of a State with its judicial jurisdiction." *Gulf Offshore v. Mobil Oil Corp.*, 453 U.S. 473, 482, 101 S.Ct. 2870, 2877, 69 L.Ed.2d 784, 794 (1981).[8]

The courts have uniformly upheld a state court's exercise of jurisdiction over personal injury and wrongful death actions arising from activities occurring on federal enclaves under the "exclusive" jurisdiction of the federal government. The Supreme Court has stated that there is "[n]othing inherent in exclusive federal sovereignty over a territory [that] precludes a state court from entertaining a personal injury suit concerning events occurring in the territory and governed by federal law." *Gulf Offshore v. Mobil Oil Corp.*, *supra*, 453 U.S. at 481, 1010 S.Ct. at 2877-2877, 69 L.Ed.2d at

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[8] While § 14-102(b) and Ch. 743 of the Acts of 1906 may literally purport to relinquish all Maryland political jurisdiction over federal enclaves ceded between 1906 and 1943, the effect of the cessions during that period is not quite as far reaching as the statutory language would indicate. For example, numerous Maryland laws concerning voting, education, other individual rights, taxation, licensing, appropriations, employment, divorce, etc., are applicable to such "exclusive" federal enclaves. *See* the discussion in *Evans v. Cornman*, 398 U.S. 419, 90 S.Ct. 1752, 26 L.Ed.2d 370 (1970).

793. The Supreme Court in *Gulf Offshore* continued (453 U.S. at 481-482, 101 S.Ct. at 2877, 69 L.Ed.2d at 793-794):

> " 'The judiciary power of every government looks beyond its own local or municipal laws, and in civil cases lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of dispute are relative to the laws of the most distant part of the globe. The Federalist No. 82, p. 514 (H. Lodge ed. 1908) (Hamilton), quoted in *Claflin v. Houseman*, 93 U.S., at 138. State courts routinely exercise subject-matter jurisdiction over civil cases arising from events in other States and governed by the other States' laws. See, *e.g.*, *Dennick v. Railroad Co.*, 103 U.S. 11, 26 L.Ed.439 (1881). Cf. *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 101 S.Ct. 633, 66 L.Ed.2d 521 (1981). That the location of the event giving rise to the suit is an area of exclusive federal jurisdiction rather than another State, does not introduce any new limitation on the forum State's subject matter-jurisdiction."

See, e.g., *Evans v. Cornman*, 398 U.S. 419, 424, 90 S.Ct. 1752, 1756, 26 L.Ed.2d 370, 375 (1970) (persons on exclusive federal enclaves "are subject to the process and jurisdiction of state courts"); *Ohio River Contract Co. v. Gordon*, 244 U.S. 68, 72, 37 S.Ct. 599, 601, 61 L.Ed 997, 1000 (1917) (an action for personal injury suffered on a reservation under the exclusive jurisdiction of the United States may be maintained in a state court which has personal jurisdiction over the defendant); *Stokes v. Adair*, 265 F.2d 662, 666 (4th Cir.), *cert. denied*, 361 U.S. 816, 80 S.Ct. 56, 4 L.Ed.2d 62 (1959); *Mater v. Holley*, 200 F.2d 123 (5th Cir. 1952); *Brennan v. Shipe*, 414 Pa. 258, 199 A.2d 467, *app. dismissed*, 379 U.S. 20, 85 S.Ct. 156, 13 L.Ed.2d 91 (1964); *In re Air Crash Disaster at Gander, Newfoundland*, 660 F.Supp. 1202, 1207-1208 (W.D.Ky 1987). *See also Swanson Painting Company v. Painters Local Union No. 260*, 391 F.2d 523, 525 (9th Cir., 1968) ("the fact that business is transacted within a federal enclave . . . does not immunize the persons engaged therein

from liability for breach of any duty arising from such activity"); *Knott Corporation v. Furman*, 163 F.2d 199, 202 (4th Cir.), *cert. denied*, 322 U.S. 809, 68 S.Ct. 111, 92 L.Ed. 387 (1947) ("the doing of business . . . [on a federal enclave] amounts to . . . consent to be sued in the federal court of the district as well as in the state courts with respect to a cause of action which has arisen there").

Although a state court clearly can exercise jurisdiction in cases based on injuries occurring on a federal enclave within the state, the state court may be required under traditional choice of law principles to apply federal law in the tort suit. In this wrongful death case, the Congress has enacted legislation mandating the law to be applied, as 16 U.S.C. § 457 provides:

> **"Action for death or personal injury within national park or other place under jurisdiction of United States; application of State laws**
>
> In the case of the death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any State, such right of action shall exist as though the place were under the jurisdiction of the State within whose exterior boundaries such place may be . . . ."

The recent cases hold that § 457 requires the application of state law as it exists at the time of the tort rather than state law at the time of the cession of the land. *See, e.g.*, *Ferebee v. Chevron Chemical Company*, 736 F.2d 1529, 1533-1534 (D.C. Cir.), *cert. denied*, 469 U.S. 1062, 105 S.Ct. 545, 83 L.Ed.2d 432 (1984) (§ 457 envisions application of current law of surrounding state); *Vasina v. Grumman Corp.*, 644 F.2d 112, 117-118 (2d Cir. 1981) (same); *Greene v. Vantage Steamship Corporation*, 466 F.2d 159, 166 n. 9 (4th Cir. 1972) (implicitly interpreting § 457 to apply current state law); *Mathis v. General Electric Corporation*, 580 F.2d 192, 194 (5th Cir. 1978) (same).

The District relies upon *Lowe v. Lowe*, 150 Md. 592, 133 A. 729 (1926), for the argument that the cession of exclusive jurisdiction over land transfers to the federal government exclusive authority and jurisdiction for all purposes, and deprives a state court of authority to entertain litigation growing out of a transaction on the federal enclave. *Lowe* involved an action for divorce filed by residents of a federal enclave in Cecil County, Maryland. This Court held that the Lowes, as residents of an "exclusive" federal enclave, were not residents of the State of Maryland and that, therefore, a Maryland state court had no authority to entertain their divorce action. *Lowe v. Lowe*, *supra*, 150 Md. at 600-601, 113 A. at 733. In support of its holding, the Court pointed to some old cases purportedly standing for the principle that the "inhabitants of [a federal enclave] cease to be inhabitants of the state and can no longer exercise any civil or political rights under the laws of the state." 150 Md. at 598, 133 A. at 732. The holdings in the cases cited in *Lowe* included the following: that residents on a federal enclave could not vote at state elections, that residents of a federal enclave could not send their children to the state public schools, and that residents of federal enclaves are exempt from all county and state taxes. The views expressed in *Lowe* were reiterated by this Court in *Royer v. Bd. of Elec. Sups.*, 231 Md. 561, 191 A.2d 446, *cert. denied*, 375 U.S. 921, 84 S.Ct. 267, 11 L.Ed.2d 165 (1963).

The Supreme Court in *Evans v. Cornman*, *supra*, 398 U.S. at 421-426, 90 S.Ct. at 1754-1757, 26 L.Ed.2d at 373-377, expressly disapproved of the holding in *Royer v. Bd. of Elec. Sups.*, *supra*, and disapproved of the principles set forth in both *Royer* and *Lowe*. *Evans v. Cornman*, also involving residents of an "exclusive" federal enclave in Maryland, held that such persons were residents of the State of Maryland, were entitled to vote in Maryland elections, were subject to Maryland taxes, and were subject to numerous other Maryland laws. The Supreme Court explicitly stated that residents

of federal enclaves in Maryland "are subject to the process and jurisdiction of state courts; they themselves can resort to those courts in divorce . . . proceedings; and they send their children to Maryland public schools." 398 U.S. at 424, 90 S.Ct. at 1756, 26 L.Ed.2d at 376. The Court also pointed out that the view taken by numerous older cases concerning "the relationship between federal enclaves and the States in which they are located" is no longer accurate. 398 U.S. at 423, 90 S.Ct. at 1755, 26 L.Ed.2d at 375. *See also Howard v. Commissioners of Sinking Fund of City of Louisville*, 344 U.S. 624, 73 S.Ct. 465, 97 L.Ed. 617 (1953).[9]

Lowe v. Lowe and *Royer v. Bd. of Elec. Sups.* are not only inconsistent with controlling Supreme Court authority, but they are inconsistent with the policy of the Maryland General Assembly embodied in § 14-102 of the State Government Article and §§ 2-101 *et seq.* and 6-101 of the Courts and Judicial Proceedings Article. Consequently, the *Lowe* and *Royer* cases are overruled.

IV.

The District of Columbia argues that even if a Maryland court could exercise jurisdiction over a tort suit based on activities of an individual or of a private corporation occurring on a federal enclave, it cannot exercise jurisdiction over the District, a public corporation. The District claims that it is entitled to the same governmental immunity as the United States. The District asserts that requiring it to answer in a Maryland court would "interfere with the

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[9] It is noteworthy that the specific holding in the *Lowe* case would leave the residents of a federal enclave without a remedy, as the federal courts have no jurisdiction over divorce actions. *Ankenbrandt v. Richards*, 504 U.S. ——, 112 S.Ct. 2206, 119 L.Ed.2d 468 (1992); *Barber v. Barber*, 21 How. 582 (1859). The Supreme Court, however, has made it clear that "no area however small will be left without a developed legal system for private rights," *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 100, 60 S.Ct. 431, 434, 84 L.Ed. 596, 600 (1940).

District's governmental functions." (District of Columbia brief at 11).

In support of its immunity argument, the District relies on several Supremacy Clause cases. *See, e.g., Pacific Coast Dairy v. Department of Agriculture*, 318 U.S. 285, 295, 63 S.Ct. 628, 631, 87 L.Ed 761, 767 (1943); *Unites States v. McGee*, 714 F.2d 607, 612 (6th Cir. 1983); *United States v. Bellevue*, 474 F.2d 473, 476 (8th Cir.), *cert. denied*, 414 U.S. 827, 94 S.Ct. 46, 38 L.Ed.2d 60 (1973); *United States v. Dreos*, 156 F. Supp. 200, 206 (D. Md. 1957). In these cases, the courts held that federal employees on federal enclaves could not be subjected to state legislation in the face of a conflicting federal law or federal function. Thus, the Supreme Court has stated (*James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 103-104, 60 S.Ct. 431, 436, 84 L.Ed. 596, 603 (1940)):

> "[T]he authority of state laws or their administration may not interfere with the carrying out of a national purpose. Where enforcement of the state law would handicap efforts to carry out the plans of the United States, the state enactment must, of course, give way."

In the context of this case, however, the District of Columbia is not the United States, is not carrying out a national purpose, and is not entitled to the governmental immunity or supremacy of the United States. The District is "a body corporate for municipal purposes," D.C. Code Ann. (1981, 1992 Repl. Vol.), § 1-102(a), and it has been treated as a municipality by the courts. *See, e.g., Haynesworth v. Miller*, 820 F.2d 1245, 1271-1272 (D.C.Cir. 1987). The District is not treated like the United States, but rather is treated like any other municipality for purposes of 42 U.S.C. § 1983. *See, Dorman v. District of Columbia*, 888 F.2d 159, 162 (D.C. Cir. 1989); *Best v. District of Columbia*, 743 F.Supp. 44, 45-47 (D.D.C. 1990); *O'Callaghan v. District of Columbia*, 741 F. Supp. 273, 276 (D.D.C. 1990); *Propert v. District of Columbia*, 741 F.Supp. 959, 960 (D.D.C. 1990).

It has been held that the District's governmental immunity is not derived from the United States but rather has developed in the case law of the District of Columbia as a common law theory of municipal governmental immunity. *Wade v. District of Columbia*, 310 A.2d 857, 861-862 (D.C. App. 1973). Moreover, a Maryland court need not recognize the governmental immunity of another state or of a municipal corporation or political subdivision outside of Maryland. *See Nevada v. Hall*, 440 U.S. 410, 417-425, 99 S.Ct. 1182, 1186-1190, 59 L.Ed.2d 416, 422-428 (1979); *Biscoe v. Arlington County*, 738 F.2d 1352, 1357 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1159, 105 S.Ct. 909, 83 L.Ed.2d 923 (1985); *Peterson v. State of Texas*, 635 P.2d 241, 242-243 (Colo. App. 1981); *Struebin v. State*, 322 N.W.2d 84, 85-86 (Iowa), *cert. denied*, 459 U.S. 1087, 103 S.Ct. 570, 74 L.Ed.2d 933 (1982); *Mianecki v. Second Judicial Dist. Court*, 658 P.2d 422, 423 (Nev.), *cert. dismissed*, 464 U.S. 806, 104 S.Ct. 195, 78 L.Ed.2d 71 (1983). The District of Columbia cannot avoid this result by relying on cases involving conflicts between state law and federal law or federal functions which are governed by the Supremacy Clause of the United States Constitution.

Therefore, we hold that a Maryland court has the authority to exercise jurisdiction in a case where the District of Columbia is sued for its allegedly tortious activities on a federal enclave located in Maryland.[10]

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[10] As previously stated, the District alternatively argued in the trial court that the plaintiffs' complaint failed to state a cause of action because there was no special relationship between the plaintiffs and the District giving rise to a duty, because there was no causal connection between the alleged negligence of these defendants and the death of Thomas T. Hansford, Jr., and because there was no basis in law for the § 1983 constitutional claims. The District did not file a cross-petition or a conditional cross-petition for a writ of certiorari raising these issues. Consequently, the District does not in its brief seek to sustain the trial court's judgment by pressing the duty, proximate cause, and § 1983 arguments. Therefore, we express no opinion on these issues; they are for the trial court on remand.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED AND CASE REMANDED TO THAT COURT WITH DIRECTIONS TO REVERSE THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AND TO REMAND THE CASE TO THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY THE RESPONDENT.

Reported

In The Court of Special Appeals of Maryland

No. 1764

SEPTEMBER TERM, 1989

THOMAS T. HANSFORD, SR.

v.

DISTRICT OF COLUMBIA

Alpert, Bloom, Cathell, JJ.

Opinion by *Alpert, J.*

Filed: September 5, 1990

In this case of first impression, we must decide whether Maryland courts may exercise jurisdiction over a non-resident who "causes tortious injury in the state by an act or omission . . ." on a federal enclave located within the geographical boundaries of Maryland. Under the circumstances set forth below, we answer in the negative.

On August 15, 1988, appellants, Thomas T. Hansford, Sr. and his wife, Mary Dell Hansford, filed a complaint in the Circuit Court for Prince George's County against the District of Columbia (appellee), a District of Columbia employee, J.E. Neil Olliviera (Olliviera), and Carl Sewanti Richardson, Jr. (Richardson), due to their son's murder. In their complaint, appellants allege that, in 1987, appellee and its employee Olliviera, were negligent in the operation of their maximum security prison for juvenile delinquents and, as a result, Richardson was able to escape from their custody and con-

trol. The prison, known as Oak Hill, is located in Laurel, Maryland. Richardson escaped from the facility during the summer of 1987. On August 16, 1987, Richardson murdered Thomas T. Hansford, Jr., the oldest child of appellants. Appellants live in Prince George's County.

On October 17, 1988, appellee and Olliviera filed a motion for additional time to answer the complaint. The court granted this motion on October 21, 1988.

On March 13, 1989, the District filed both a motion "raising preliminary objections and to dismiss complaints," and an answer to the complaint. The clerk's office docketed both on March 13th, numbering the answer ahead of the motion. On June 15, 1989, appellants filed their opposition to appellee's motion.

On September 8, 1989, the trial court granted appellee's motion based on lack of personal jurisdiction and dismissed the complaint against appellee. Appellants filed a timely appeal. On December 4, 1989, the trial court granted appellant's motion for entry of a final judgment.

Appellant asks this court to consider whether the trial court erroneously:

I. granted appellee's motion to dismiss insofar as it found no Maryland statute authorized the exercise of jurisdiction over appellee as a "foreign municipal corporation" even though it maintains a full time presence in this state by operating a maximum security detention facility.

II. considered and granted appellee's motion to dismiss due to lack of personal jurisdiction where appellee had, five (5) months prior to filing such motion, entered its general appearance in the case, and where appellee filed an answer, including ten (10) defenses, a set-off, a cross-claim, and a jury trial demand, before filing its motion raising preliminary objections.

III. granted appellee's motion to dismiss insofar as it found sovereign immunity barred liability in

Maryland courts based on appellee's negligent operation in Maryland of a maximum security prison for violent juvenile delinquents.

I. Personal Jurisdiction

Appellee contends that the lower court properly granted its motion to dismiss for lack of personal jurisdiction since the District of Columbia's alleged negligence in allowing Richardson to escape and in not assisting in his recapture occurred at Oak Hill, a federal enclave,[1] over which the District and the United States have been ceded exclusive jurisdiction. Appellant counters that, regardless of Oak Hill's status as a federal enclave, the lower court still has jurisdiction over appellee pursuant to the Maryland Code, Courts and Judicial Proceeding, § 6-101 and § 6-103. Appellee is correct. We explain.

The land on which Oak Hill is located was acquired by the United States in 1923, pursuant to a congressional directive, for use by the District of Columbia for municipal purposes. 42 Stat. 1360, ch. 148 (1923).[2] At the time of this acquisition, Chapter 743, § 2 of the Maryland Sessions Laws of 1906, later codified as Md. Ann. Code Art. 96, § 36 (1957), granted

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[1] "[A]reas in which a state has ceded jurisdiction to the United States are known as 'Federal Enclaves' or 'Federal Islands' within the state." 16 Words and Phrases 486 (1959).

[2] The law provided:

> The Commissioners of the District of Columbia are authorized and directed to acquire a site for a home and school for feeble-minded persons, said site to be located in the District of Columbia or in the State of Maryland or in the State of Virginia, and to erect thereon suitable buildings . . . . If the land proposed to be acquired is without the District of Columbia and can not be purchased at a satisfactory price, the Attorney General of the United States, at the request of the Commissioners of the District of Columbia, shall institute condemnation proceedings to acquire such land as may be selected for said site either in the State of Maryland or in State of Virginia in accordance with the laws of said States, the title of said land to be taken directly to and in the name of the United States, but the land so acquired shall be under the jurisdiction of the Commissioners of the District of Columbia as agents of the United States. . . .

the United States exclusive jurisdiction of land acquired by it:

> *Exclusive jurisdiction* in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States *for all purposes* except the service upon such sites of all civil and criminal process of the courts of this State, but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands.

(Emphasis added).

Later, Section 47, enacted in 1943, limited any cession of jurisdiction over "lands hereafter acquired by the United States" to concurrent jurisdiction at most. That section provides that the State retains jurisdiction over lands acquired by the United States to the fullest extent possible under the Constitution. Thus, we conclude that Maryland, for land acquired by the United States between 1906 and 1943, has "ceded exclusive jurisdiction to the United States for all purposes except the service of process." 63 Ops. Md. Att'y Gen. 332, 333 (1978); 61 Ops. Md. Att'y Gen. 441, 446 (1976).

> Historically, the jurisdiction of courts to render judgment *in personam* was grounded on their de facto power over the defendant's person. Hence, his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him.

International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (citation omitted). In *International Shoe*, the Court held that due process requires only that, in order to subject a defendant to a judgment in *personam* if he is not present within the territory of the forum, he must have "certain minimum contacts with it such that the maintenance of the suit does not offend, 'traditional notions of fair play and substantial justice.' " *Id.* The Court's reasoning in upholding the jurisdiction of the State of Washington over the International Shoe Company was that

> it would be unfair to one who has a cause of action based on activities within a state to be compelled

> to go outside the state to make his claim. On the other hand, it would not be unfair to compel the foreign corporation to defend the case in the state in view of its contacts there.

Auerbach, *The "Long Arm" Comes to Maryland*, 26 Md. L. Rev. 13, 17 (1966).

After *International Shoe*, "states began to enact 'long arm' or 'single act' statutes asserting jurisdiction on the basis of acts within the state." *Id.* at 19. In 1964, Maryland enacted a "long arm" statute intended to extend the jurisdiction of the state courts to the fullest possible limit under the state and federal constitution. *See* 1964 Md. Laws 95. *See also* Legislative Council of Maryland, Report to the Gen. Assembly 1964, at 179-180.

In the case *sub judice*, however, we do not believe that personal jurisdiction can be secured through Maryland's "long arm" statute. Md. Cts. & Jud. Proc. Code Ann. §§ 6-103, 6-101 (1989). Section 6-103(b)(3) authorizes a court to exercise personal jurisdiction over a person who "causes tortious injury in the state by an act or omission *in the State.*" (Emphasis added). We note that § 6-101(d) defines "State" as including "any federal enclave, reservation, or land within the geographical limits of the State." We further note the legislative intent of this statute set forth in § 6-101(e):

> It is the intention of the General Assembly to extend the personal jurisdiction and venue of courts of the State and the power to serve process of those courts to any person on federal enclaves, reservations, or lands within the State to the fullest extent permitted by the Constitution and laws of the United States.

The Court of Appeals in *Lowe v. Lowe*, 150 Md. 592, 598 (1926), while considering the right of a resident of Perry Point, a federal enclave, to sue for divorce in a state court, stated that "courts have, with practical unanimity, held that the power of exclusive legislation carries with it exclusive

jurisdiction, and in many cases have treated the cession as accomplishing a thorough separation of the land and its inhabitants from the state." The Supreme Court, however, in *Evans v. Corman*, 398 U.S. 419, 421-22 (1970), clearly rejected "the fiction of a state within a state," and held that individuals living on the grounds of National Institutes of Health (N.I.H.), a federal enclave within the geographical boundaries of Maryland, could not be denied the right to vote in Maryland elections. *See also Howard v. Commissioners of Sinking Fund*, 344 U.S. 624, 627 (1953).

In the instant case, were we to consider the issue of whether the alleged tortious act of appellee was committed "in the state" on the basis of the precedinq authorities and the definition of "state" provided in § 6-101(d), we would be inclined to accept appellant's contention that Maryland courts have personal jurisdiction in the present matter.

Section 6-101 must be read, however, together with Maryland statutes which limit jurisdiction. "It is [ ] an established principle that all statutory provisions which relate to the same subject matter and are thus *in pari materia* should be construed together and harmonized as far as possible." *Unnamed Physician v. Commission on Medical Discipline of Maryland*, 285 Md. 1, 10 (1979).

Although the State has statutorily reserved jurisdiction over lands that the United States has acquired since 1943, under Maryland State Government Code Annotated § 14-102(b) (1984), this reservation does not

> affect the jurisdiction and authority of the State over land or *persons*, property, and *transactions* on land that the United States or its unit has acquired on or before May 31, 1943 to the extent that the State ceded jurisdiction under * * * Chapter 743, §§2 and 3, of the Acts of the General Assembly of 1906 * * *.

(Emphasis added).

The legislature in 1988 added subsection (c) to § 14-102, which provided that:

> Notwithstanding subsection (a) of this section, for the purpose of enforcing the civil or criminal laws of the State, the governor may enter into agreements with the United States to establish full or partial concurrent jurisdiction by the State and the United States over any lands in the State held by the United States.

Md. State Gov't §§ 14-102(c) (Supp. 1990).

The legislature chose not to amend subsection (b) (above).

We conclude, then, that whereas the legislature intended to "extend jurisdiction . . . of courts of the state . . . to any person on federal enclaves . . . to the fullest extent permitted by the Constitution and laws of the United States," it is apparent that it did not intend the extension to apply to "transactions on land that the United States . . . has acquired on or before May 31, 1943 . . . ." "It is well settled that when two statutes, one general and one specific, are found to conflict, the specific statute will be regarded as an exception to the general statute." *Farmers & Merchants Bank v. Schlossberg*, 306 Md. 48, 63 (1986).

We hold that the Circuit Court for Prince George's County lacked jurisdiction and that the trial court properly granted the Motion to Dismiss, albeit for different reasons than those discussed above.[3] *See Robeson v. State*, 285 Md. 498, 503 (1979).

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[3] We are cognizant of the fact that appellee's entire jurisdiction argument on this point is dependent on the fact that the federal government acquired the land in question between 1906 and 1943. Appellee acknowledges that the deed to the subject "federal enclave," authenticating that the land acquisition occurred in 1923, is not part of the record before the circuit court. A copy of the deed was annexed to a motion to supplement the record, which motion was both filed and denied after oral argument. Since appellant does not dispute the existence of the deed, however, or, more important, the fact that the United States acquired the land in 1923 and still owns it, we have assumed, for the purpose of our analysis, that the United States acquired the land then and still owns it.

II. *Rule 2-322(a) — Waiver of Certain Defenses*

Appellant contends that appellee waived its claim of lack of personal jurisdiction by (1) filing its October 17, 1988 motion for an extension of time in which to answer or otherwise respond to the complaint and (2) failing to file its motion raising preliminary objections before filing its answer. We find no merit in these contentions.

Appellant cites authorities which hold that if a defense under Rule 323, the predecessor of the present Maryland Rule 2-322, is asserted as part of a pleading which goes to the merits, there has been a "general appearance" which constitutes a waiver of preliminary objections. *See Eastham v. Young*, 250 Md. 516, 522 (1968); *McCormick v. Church*, 219 Md. 422 (1959). Appellants argue that appellee's motion for an extension of time in which to answer or otherwise respond to the complaint dealt with the substance of the complaint on its merits and thereby waives appellee's right to contest the court's jurisdiction. We reject this contention outright. A request for an extension of time in which to answer or respond does not in any manner go to the merits of the case.

In addition, appellant contends that appellee has waived its preliminary objection to jurisdiction since it failed to file its motion raising its objections "before" filing its answer.[4] Although both the motion to dismiss and the answer were filed by appellee and placed on the docket by the court clerk on the same day, appellant asserts that appellee has failed to comply with Rule 2-322 and thus has waived the jurisdictional defense.

In considering this issue at the motions hearing, the trial judge stated:

> Both filed on the same day. It probably would have been better had you made sure that the motion rais-

[4] Maryland Rule 2-322 provides that the defense of lack of jurisdiction "*shall* be made by motion to dismiss filed *before* the answer. . . ." (Emphasis added).

> ing preliminary objections was docketed in first, but I think that is a super technical matter and I'm not going to conclude that you have waived the right to raise the matters contained in the motion raising preliminary objection merely because the clerk in shuffling papers put one ahead of the other, although I have, if my memory serves me, seen instances in which some higher court concluded that was fatal, but to me that's . . . .

We agree with the trial judge's conclusion. The purpose of Rule 2-322(a) is to have a legal question decided before the trial of the action on its merits and this purpose has been accomplished. *Irvine v. Montgomery County*, 239 Md. 113, 117 (1965). "Compliance with procedural requlations is essential to the fair and efficient administration of justice, but it is the substance of the compliance and fair treatment of the parties which are determinative." *Id.* (Citations omitted).

III.

Given our decision on the first issue, we need not decide this one.

JUDGMENT AFFIRMED;
APPELLEE TO PAY
THE COSTS.

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

CAL No. 88-13309

THOMAS T. HANSFORD, SR.,
INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF THOMAS T. HANSFORD, JR.
DECEASED, *et al.*,
Plaintiffs,

v.

DISTRICT OF COLUMBIA,
A MUNICIPAL CORPORATION,
Defendants.

ORDER

Upon consideration of the plaintiffs' Motion for Entry of a Final Judgment against defendant District of Columbia, and

It appearing that there is good cause shown and that there is no just reason for delay and that delay will produce sufficient hardship and unfairness to the plaintiffs to justify an immediate appeal,

It is by the Court this 4th day of December, 1989,

ORDERED

1. That the *Motion* be and it is hereby granted, and
2. That the judgment against defendant District of Columbia rendered September 8, 1989, be and it is a FINAL JUDGMENT since it disposes of all claims against defendant District of Columbia.

/s/ James F. Couch, Jr.
JUDGE,
Circuit Court for Prince George's County, Maryland

[Stamped: FILED December 4, 1989
Clerk of the Circuit Court, Prince George's County, Maryland]

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

CAL No. 88-13309

THOMAS T. HANSFORD, SR.,
INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF THOMAS T. HANSFORD, JR.
DECEASED, *et al.*,
Plaintiffs,

v.

DISTRICT OF COLUMBIA, *et al.*,
Defendants.

ORDER

Upon consideration of the consent motion to alter or amend judgment, and it appearing to the Court that there is good cause shown, it is by the Court this 2nd day of February 1990

ORDERED that the motion be, and hereby is, granted, and it is

FURTHER ORDERED that the judgment entered by order of the Honorable James F. Couch, Jr. on December 4, 1989 is hereby altered so as to change paragraph numbered two of that order to read:

"That the judgment for defendant District of Columbia rendered September 8, 1989, be and it is a FINAL JUDGMENT since it disposes of all claims against defendant District of Columbia."

/s/ James F. Couch, Jr.
JUDGE,
Circuit Court for Prince George's County, Maryland

[Stamped: FILED February 5, 1990
Clerk of the Circuit Court, Prince George's County, Maryland]

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

CAL No. 88-13309

THOMAS T. HANSFORD, SR.,
INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF THOMAS T. HANSFORD, JR.
DECEASED, *et al.*,
Plaintiffs.

V.

DISTRICT OF COLUMBIA, *et al.*,
Defendants.

REPORTER'S OFFICIAL TRANSCRIPT
OF PROCEEDINGS
(Motions Hearing)

September 8, 1989
Upper Marlboro, Maryland

BEFORE:
HONORABLE JAMES F. COUCH, JR., Associate Judge

APPEARANCES:

On behalf of the Plaintiff
GARY SIDELL, ESQ.
LESLIE G. FEIN, ESQ.

On behalf of the Defendants
WILLIAM W. NOOTER, ESQ.

D. F. COOLAHAN
Official Court Reporter
P. O. Box 401
Upper Marlboro, Maryland 20772

PROCEEDINGS

THE CLERK: CAL 88-13309, Hansford, et al versus District of Columbia.

* * *

THE COURT: Let me inquire initially, since the motion attacking jurisdiction is a mandatory motion, has to be filed before an answer is filed. Was that complied with?

* * *

THE COURT: The docket entries reflect on March 13th, docket entry number 20, Defendant District of Columbia and Ollivierra, that was filed and, of course, it also shows docket entry number 24 filed on the same date, the motion raising preliminary objections and to dismiss was filed.

MR. NOOTER: That's correct.

THE COURT: Both filed on the same day. It probably would have been better had you made sure that the motion raising preliminary objections was docketed in first, but I think that is a super technical matter and I'm not going to conclude that you have waived the right to raise the matters contained in the motion raising preliminary objection merely because the clerk in shuffling papers put one ahead of the other, although I have, if my memory serves me, seen instances in which some higher court concluded that was fatal, but to me that's ——

* * *

THE COURT: I think this day and age —— back in the old days of common law pleading, which went out before you were born probably.

MR. SIDELL: I appreciate the comment.

THE COURT: It might have been a real problem, but in good conscience, I can't say that the motion has —— it has to be denied.

* * *

THE COURT: What you're saying to the Court is that the District of Columbia law being what you claim it to be confers jurisdiction on this Court. I disagree with you.

* * *

MR. SIDELL: Let me try to clarify our position. That is not that that law confers jurisdiction on this Court. That law merely permits lawsuits against the District of Columbia wherever they may be brought, whether it's the District or, if appropriate, elsewhere and what we are suggesting is that this Court has jurisdiction based on the existence of the Laurel, Maryland facility, a prison not located in the District of Columbia, but operated by the District and its officials in Maryland for indeed conduct which ultimately resulted in a murder of a twenty-one year old man.

THE COURT: That may be a good argument if this were an in rem proceeding, which it isn't. I'm afraid that I have to disagree with your jurisdictional argument. I've ruled on it once. I'm persuaded that every court that has touched this problem has ruled against you, so ——

* * *

THE COURT: I'm going to dismiss the action as to the District of Columbia. I will deny the motion to dismiss as to the individual Defendant and wait until it's been a factual scenario developed. It may ultimately be shown that the individual Defendant was engaged in discretionary mattters, but at this time I don't feel like I can grant your motion as to Mr. Ollivierra.

OTHER STATUTES

Md. Code (1989), Courts and Judicial Proceedings § 6-101

(a) For purposes of personal jurisdiction, venue, and service of process, the following terms have the meanings indicated:

(b) "County" includes any federal enclave, reservation, or land within the geographical limits of the county.

(c) "Resident" includes a person residing on a federal enclave, reservation, or land in the State or a county.

(d) "State" includes any federal enclave, reservation, or land within the geographical limits of the State.

(e) *Legislative intent.* — It is the intention of the General Assembly to extend the personal jurisdiction and venue of courts of the State and the power to serve process of those courts to any person on federal enclaves, reservations, or lands within the State to the fullest extent permitted by the Constitution and laws of the United States.

(f) *Termination of jurisdiction.* — The jurisdiction of the United States over land acquired by it shall continue only so long as the United States owns, leases, or occupies the land.

Md. Code (1989), Courts and Judicial Proceedings § 6-102

(a) *Basis of personal jurisdiction.* — A court may exercise personal jurisdiction as to any cause of action over a person domiciled in, served with process in, organized under the laws of, or who maintains his principal place of business in the State.

(b) *Exercise of jurisdiction on other basis.* — This section does not limit any other basis of personal jurisdiction of a court of the State.

Md. Code (1989). Courts and Judicial Proceedings § 6-103

(a) *Condition.* — If jurisdiction over a person is based solely upon this section, he may be sued only on a cause of action arising from any act enumerated in this section.

(b) *In general.* — A court may exercise personal jurisdiction over a person, who directly or by an agent:

(1) Transacts any business or performs any character of work or service in the State;

(2) Contracts to supply goods, food, services, or manufactured products in the State;

(3) Causes tortious injury in the State by an act or omission in the State;

(4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the State;

(5) Has an interest in, uses, or possesses real property in the State; or

(6) Contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation, or agreement located, executed, or to be performed within the State at the time the contract is made, unless the parties otherwise provide in writing.

Maryland Code (1984 & 1992 supp.), State Government § 14-102

(a) *In general.* — With respect to land that the United States or any of its units leases or otherwise holds in the State, the State reserves jurisdiction and authority over the land and over persons, property, and transactions on the land to the fullest extent permitted by the United States Constitution and that is not inconsistent with the governmental purpose for which the land is held.

(b) *Previous grants.* — This section does not affect the jurisdiction and authority of the State over land or persons, property, and transactions on land that the United States or its unit has acquired on or before May 31, 1943, to the extent that the State ceded jurisdiction under:

* * *

(4) Chapter 743, §§ 2 and 3, of the Acts of the General Assembly of 1906[.]

* * *

Supreme Court, U.S.
FILED
MAY 27 1993
OFFICE OF THE CLERK

No. 92-1655

In The

Supreme Court of the United States

October Term, 1992

DISTRICT OF COLUMBIA,

Petitioner,

vs.

THOMAS T. HANSFORD, SR. AND
MARY DELL HANSFORD,

Respondents.

Petition For A Writ Of Certiorari
To The Maryland Court Of Appeals

RESPONDENTS' BRIEF IN OPPOSITION

GARY M. SIDELL
1717 Massachusetts Ave., N.W.
Suite 100
Washington, D.C. 20036
(202) 783-0060
(Counsel of Record)

LESLIE G. FEIN
CHRISTOPHER G. HOGE
CROWLEY, HOGE & FEIN
1717 Massachusetts Ave., N.W.
Suite 100
Washington, D.C. 20036
(202) 483-2900

Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether a state's courts may exercise *in personam* jurisdiction in a tort suit against the District of Columbia, a non-resident municipal corporation that maintains a full time presence on a Federal enclave within the geographic boundaries of that State and that commits a tort on that enclave causing injury within the State?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

REASONS WHY THE WRIT SHOULD BE DENIED .. 5

A. A state may exercise its judicial jurisdiction by permitting its citizens to maintain a lawsuit in its own courts against a municipal corporation located on a federal enclave within that state's boundaries without any unconstitutional interference in that corporation's activities 7

B. "Exclusive jurisdiction" encompasses only exclusive legislative authority over a particular area and does not limit a state's judicial jurisdiction to provide its courts as a forum for the resolution of various local disputes which occur or involve parties located on federal enclaves 14

C. The District of Columbia, by its operation of a prison in Maryland, is not operating as the federal government, nor carrying out any national purpose and, therefore, is not entitled to any immunity which may be applicable to the federal government 18

CONCLUSION 20

TABLE OF AUTHORITIES

Page

CASES

Beck v. Washington, 369 U.S. 541 (1962) 6

Biscoe v. Arlington County, 238 U.S. App. D.C. 206, 738 F.2d 1352 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1159 (1985) 11, 12, 13

Cannon v. United States, 645 F.2d 1128, 207 U.S. App. D.C. 203 (D.C. Cir. 1981) 19

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) 6

District of Columbia v. Woodbury, 136 U.S. 450 (1890) 18

Evans v. Cornman, 398 U.S. 419 (1970) 9, 10

Exxon Corp. v. Eagerton, 462 U.S. 176 6

Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525 (1885) 8, 11

Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473 (1981) 15, 16

Hansford v. District of Columbia, 329 Md. 112, 617 A.2d 1057 (Md. 1993) 16, 19

Howard v. Commissioners of Sinking Fund of City of Louisville, 344 U.S. 624 (1953) 8, 9, 10

In re Air Crash Disaster at Gander, Newfoundland, 660 F. Supp. 1202 (W.D. KY. 1987) 15

James Stewart & Co. v. Sadrakula, 309 U.S. 94 (1940) 19

Knott Corp. v. Furman, 163 F.2d 199 (4th Cir.), *cert. denied*, 322 U.S. 809 (1947) 8

Mainecki v. Second Judicial Dist. Court, 658 P. 2d 422, *cert. dismissed*, 464 U.S. 806 (1983) 13

TABLE OF AUTHORITIES – Continued

Page

Metropolitan R.R. v. District of Columbia, 132 U.S. 1 (1889) 18

Nevada v. Hall, 440 U.S. 410 (1979) 7, 10, 12, 13

Ohio River Contract Co. v. Gordon, 244 U.S. 68 (1917) 15

Peterson v. Texas, 635 P.2d 241 (Colo.App. 1981) ..12, 13

Phillips v. Baltimore, 110 Md. 431, 72 A. 902 (1909) 3

Street v. New York, 394 U.S. 576 (1969) 6

Wade v. District of Columbia, 310 A.2d 857 (D.C. 1973) 19

STATUTES

Constitution, Article I, § 8, Cl. 17 ..... 4, 6, 8, 9, 11

Constitution, Article IV, § 1 11

16 U.S.C. § 457 15

28 U.S.C. § 1346(b) 19

28 U.S.C. § 2671, et seq. 19

42 U.S.C. § 1983 3

D.C. Code § 1-102(a) 18

Md. Code, Courts and Judicial Proceedings Article § 6-101, et seq. (1989) 4, 5

Md. Code, Courts and Judicial Proceedings Article § 6-102 (e) 16

Md. Code, State Government Article § 14-102(b) (1984, 1992 Cum. Supp.) 4, 5

RULE

Sup.Ct.R. 29.4(c) 6

No. 92-1655

In The

Supreme Court of the United States

October Term, 1992

DISTRICT OF COLUMBIA,

Petitioner,

vs.

THOMAS T. HANSFORD, SR. AND
MARY DELL HANSFORD,

Respondents.

Petition For A Writ Of Certiorari To The Maryland Court Of Appeals

RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

In June, 1987, Carl Sewanti Richardson ("Richardson") escaped for the second time from Oak Hill, the District of Columbia's maximum security facility for its most violent and dangerous juvenile delinquents. The Oak Hill facility is located in Laurel, Maryland, on land that the petitioner alleges is a "Federal enclave".[1] At the

[1] Although petitioner contends that the land on which Oak Hill is located is, in fact, a federal enclave, there is no record support for its contention. Indeed, *after* the June 14, 1990, oral argument before the Maryland Court of Special Appeals,

time of his June, 1987, escape, Richardson had demonstrated his violent propensities by his eleven (11) prior criminal adjudications, as well as his ability to escape previously from this same facility. On August 16, 1987, at 1:00 a.m., Thomas T. Hansford, Jr., the respondents' 21-year-old child, was murdered in Prince George's County, Maryland, by Richardson and another. The respondents resided with their son in Prince George's County, at a location close to their son's homicide.

On August 3, 1988, Richardson was convicted of the felony murder of Thomas T. Hansford, Jr. in the Circuit Court for Prince George's County. Pet. App. @ 1a.[2]

On August 15, 1988, the respondents filed their lawsuit in the Prince George's County Circuit Court against Richardson, petitioner and petitioner's employee, J.E. Neil Ollivierra ("Ollivierra"), who was, at the time of Richardson's June, 1987 escape, in charge of the Oak Hill facility. Pet. App. @ 1a-2a. Although respondents allege a variety of different legal theories in their complaint, the essence of their claims is that petitioner and Ollivierra were negligent in their operation of the Laurel prison due to their failure to maintain custody and control of Richardson, who they knew or should have known had a prior record of both violent crimes and a successful escape from this very location. Moreover, respondents

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petitioner's motion to supplement the record by including a copy of the purported deed to the Oak Hill property was denied.

[2] Respondents rely on the petitioner's appendix as contained in its Petition and will refer to particular pages by "Pet. App @ ___".

contend that petitioner and Ollivierra were negligent for their failure to either recapture Richardson or to provide any warning of his escape and dangerous status to the surrounding Maryland communities. Furthermore, respondents contend that petitioner had a custom or policy at the time of Richardson's second escape as a result of which one of every three delinquents was permitted to be missing from the Oak Hill facility. Pet. App. @ 2a.

On September 8, 1989, after petitioner filed its answer, a Prince George's County Circuit Judge heard argument on, and granted in part, petitioner's motion to dismiss the complaint. This ruling was limited only to the District of Columbia. The motion was denied as to Ollivierra. The principal basis for petitioner's motion to dismiss in the trial court was that Maryland courts had no *jurisdiction* over a foreign municipal corporation. Petitioner relied exclusively on *Phillips v. Baltimore*, 110 Md. 431, 72 A. 902 (1909). The trial court based its dismissal of the petitioner solely on the *Phillips* case, which involved venue, not jurisdiction, principles and the construction of a venue statute. There was no consideration of, or ruling on, any federal or constitutional contention by the trial court since none had been raised by the petitioner. Petitioner also moved to dismiss on the grounds of insufficiency of pleading, proximate cause and failure to state a claim under 42 U.S.C. § 1983. All of these arguments were denied summarily by the trial judge. Pet. App. @ 4a.

On appeal by respondents to the Maryland Court of Special Appeals, petitioner for the first time raised its claim that Maryland courts could not exercise *in personam* jurisdiction over it due to Maryland's cession of the Oak Hill land to the United States before 1943. Pet. App. @ 5a.

As support for this contention, petitioner relied on § 14-102(b) of the State Government Article of the Maryland Code (1984, 1992 Cum. Supp.) (Maryland *legislative* jurisdiction over previously ceded land to United States), not on Article I, Section 8, Clause 17 of the United States Constitution. Pet. App. @ 6a; 6b-7b. In upholding the trial court's dismissal of the claims against petitioner, the Court of Special Appeals ruled that there was a conflict between two (2) Maryland statutes (State Government Article § 14-102(b) and Courts and Judicial Proceedings Article § 6-101, et seq., the Maryland "Long-Arm" statute) and that as a result, Maryland courts could not exercise jurisdiction over the District of Columbia where its negligence occurred on an enclave located in Maryland that was ceded before 1943. Pet. App. @ 7b. As in the trial court, the Federal Constitutional claim now raised by petitioner was neither pursued before, nor ruled upon by, the Maryland Court of Special Appeals.

The respondents' petition for a writ of certiorari to the Maryland Court of Appeals was granted. 321 Md. 709, 584 A.2d 708 (1991). The writ was issued to review the following relevant issues: 1) whether the trial court erred in holding that the District, as a municipal corporation, could not be sued outside of the jurisdiction in which it is located; and 2) whether the Court of Special Appeals erroneously affirmed the trial court's dismissal of the complaint against the District on the ground that the trial court could not exercise jurisdiction where the District's alleged tortious conduct occurred on a federal enclave ceded prior to 1943. Pet. App. @ 6a.

The Maryland Court of Appeals reversed the Court of Special Appeals by ruling that there was, in fact, no

actual conflict between the state's *legislative* jurisdiction statute, as detailed in the State Government Article § 14-102(b), and its "Long-Arm" jurisdiction statute, Courts and Judicial Proceedings Article § 6-101, et seq. when considering the issue of *in personam* jurisdiction over petitioner. Pet. App. @ 13a-14a. After holding that the two (2) state statutes can be construed harmoniously, the Court ruled that respondents may pursue their tort claims against petitioner in Maryland State Courts. The Court reasoned that *in personam* jurisdiction over petitioner exists due to petitioner's conduct of business in Maryland, its use of real property in Maryland and, arguably, its tortious causation of injury in Maryland. Pet. App. @ 14a-15a, n.7. The Court did *not* rule that either Maryland statute was in conflict with any constitutional right, title or interest the protection of which petitioner attempted to seek. Pet. App. @ 20a-22a.

REASONS WHY THE PETITION SHOULD BE DENIED

It has long been settled that a state's courts may exercise their judicial jurisdiction over all manner of activities occurring within the state's boundaries, regardless of whether those activities occur on federal enclaves or whether they involve out-of-state municipalities, counties or, indeed, other states. The District of Columbia asks this Court to create an exception to this universal rule just for itself, on the *sole* basis that it is, in effect, the same as the federal government. Moreover, the District of Columbia claims that, without such a unique exception, a state's exercise of jurisdiction over it would interfere impermissibly with the activities of the federal government to a

constitutionally significant degree. The District's fanciful argument has no basis in the decisions of *any* court.

This case presents *no* constitutional issue that was pressed by petitioner and passed upon by the trial court or the intermediate Maryland appellate court.[3] See, *Exxon Corp. v. Eagerton*, 462 U.S. 176, 181, n. 3 (1983); *Beck v. Washington*, 369 U.S. 541, 549-550 (1962); but see, *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975); *Street v. New York*, 394 U.S. 576 (1969). Although petitioner raised its Article I, Section 8, Clause 17 claim before the Maryland Court of Appeals, it was *not* passed upon by that court. As such, the advisory opinion sought by petitioner from this Court is unwarranted. Rather, the decision from which petitioner now seeks review involved the Maryland Court of Appeal's harmonious construction of two (2) state statutes. Moreover, the decision below does *not* conflict with any decision by any other court requiring reconciliation by Supreme Court review. Furthermore, this case does *not* involve an issue of widespread importance or application which will, if unreviewed here, open the floodgates of litigation against petitioner. As petitioner noted, this case presents the first occasion in seventy years where private claims involving Oak Hill have been pursued against the District of Columbia in Maryland state courts. Pet. @ 7. If petitioner's "floodgate" claim had *any* merit, the issues involved here would have

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[3] Contrary to the provisions of Supreme Court Rule 29.4(c), petitioner has not recited in its initial pleading that it has served notice on the attorney general of Maryland of its claim challenging the constitutionality of the applicable Maryland statutes.

been pressed repeatedly by others, and resolved, before now.

Finally, but most importantly, the decision below was a correct one, construing as it did the application of the Maryland "long-arm" jurisdiction statute and the availability of a state's *judicial*, rather than its legislative, jurisdiction over wrongful death and related claims. Indeed, the ability of one state's judiciary to provide a forum for civil claims against another state has been previously upheld. *Nevada v. Hall*, 440 U.S. 410 (1979). Petitioner fails to offer *any* reason why, as a municipal corporation, it is entitled to receive *greater* immunity than that afforded to a state. Contrary to the contention of petitioner that the maintenance of respondents' lawsuit will interfere with its governmental functions, no interference at all will result from the orderly use of a judicial forum where respondents present evidence to prove petitioner's liability. Petitioner then has all the rights of any other litigant, whether individual or governmental.

A. A STATE MAY EXERCISE ITS JUDICIAL JURISDICTION BY PERMITTING ITS CITIZENS TO MAINTAIN A LAWSUIT IN ITS OWN COURTS AGAINST A MUNICIPAL CORPORATION LOCATED ON A FEDERAL ENCLAVE WITHIN THAT STATE'S BOUNDARIES WITHOUT ANY UNCONSTITUTIONAL INTERFERENCE IN THAT CORPORATION'S ACTIVITIES.

The issue of whether a state may exercise its jurisdiction over activities that occur on, and people who reside on, federal enclaves within the state has been raised and resolved by this Court and others in a number of different

contexts. For instance, more than 100 years ago this Court ruled that a state-imposed tax on property located on a federal enclave was not invalid since there was no interference by imposition and collection of that tax with the operations of the federal government, even though acquisition of the enclave, the situs of the tax imposed, had been obtained under Article I, Section 8 of the Constitution. *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525 (1885). By its express terms, this constitutional provision gives Congress authority to exercise "exclusive legislation" over such land. Nevertheless, the state in which an enclave was physically located was not deprived of its non-legislative jurisdiction over that same land unless it attempted to interfere with federal operations thereon. *Id.*, at 533-534.

Similarly, a foreign private corporation doing commercial business on a federal enclave is subject to a state court's jurisdiction for injuries occurring in the course of its business on that enclave despite its claims that it is not "doing business" within the judicial jurisdiction of the state. *Knott Corp. v. Furman*, 163 F.2d 199, 206 (4th Cir.), *cert. denied*, 322 U.S. 809 (1947). Maintaining such a personal injury lawsuit in the state's courts in no way unconstitutionally "interferes" with the operation of the Federal government on that enclave.

Additionally, a city may enact legislation imposing a tax on income for work performed on a federal enclave, even though the United States had acquired "exclusive jurisdiction" of the area, so long as the tax does not interfere with the enclave's activities. *Howard v. Commissioners of Sinking Fund of City of Louisville*, 344 U.S. 624, 626 (1953). Certainly, the imposition of a tax, by either

local or state government, is burdensome conduct as to those who must pay it. By contrast, use of a state's court system by private parties can impose no *greater* burden than imposition of a tax and, indeed, respondents suggest, a far lesser burden is imposed by the exercise of judicial jurisdiction.

Enclave residents are part of the state community. They do not lose their state-created rights as citizens of the state in which the enclave is located simply because of where they live. Thus, this Court invalidated a Maryland statute prohibiting enclave residents from voting in Maryland elections as a denial of their equal protection rights. *Evans v. Cornman*, 398 U.S. 419 (1970). Residents at the National Institutes of Health ("NIH") had been denied the right to vote in Maryland elections since they were considered not to be residents of Maryland while living on an enclave created under the authority of Article I, Section 8, Clause 17, and Congress possessed "exclusive federal jurisdiction" over such enclaves. However, this Court noted that enclave residents " . . . clearly live within the geographical boundaries of the State of Maryland. . . . " since enclaves even after creation remain part of their surrounding state, relying on its previous rejection of the "fiction of a state within a state". *Id.* at 421-422, citing *Howard v. Commissioners of Louisville, supra,* at 627. Clearly, if an enclave resident is a state resident such that he or she may vote in state elections, is obligated to pay state taxes, is entitled to use the state's educational system and is subject to state process and the jurisdiction of state courts, that state's courts must have personal jurisdiction over persons and activities on an enclave. This is precisely the ruling of the Maryland

Court of Appeals in this case, and is consistent with *Evans, supra,* and *Howard, supra.* Pet. App. @ 17a-20a. In order for petitioner to prevail here, this Court's long standing prior decisions concerning the rights and responsibilities of enclave residents would need to be overruled as wrongly decided. Respondents submit they were not.

In a case not involving a Federal enclave, this Court has held that a state's constitutional claim of sovereign immunity from suit in its own courts presents no bar to suit in the courts of other states. Consistent with due process considerations, a state not only has *judicial* jurisdiction over individuals and businesses operating within its geographic borders, but also has the constitutional ability to exercise *in personam* jurisdiction over another sovereign state. In *Nevada v. Hall,* 440 U.S. 410 (1979), plaintiffs, California residents, sustained personal injuries in the State of California due to the negligent operation of a vehicle by a Nevada state employee. Nevada, when sued in California, claimed that it was immune from liability in California's courts, that its own immunity under Nevada law was entitled to full faith and credit by the California courts and that, in any event, as a matter of comity, Nevada should be able to avoid liability for the plaintiffs' injuries in California. This Court ruled against Nevada on all issues and upheld a significant plaintiffs' verdict. *Id.,* at 426-427.

It is without question that, if one *state* is not constitutionally required to accept a sister state's claim of sovereign immunity, a municipal corporation, even the District of Columbia, is not entitled to any *greater* consideration. Indeed, petitioner fails to provide any basis why it alone

should receive such unique immunity, despite its reliance on Article I, Section 8, Clause 17. This Constitutional provision, by its terms and as construed, permitted acquisition of ten (10) square miles of land to create a separate District of Columbia as a location where the nascent Federal Government would be physically protected from outside interference, particularly if host or neighboring states were incapable of guaranteeing the Government's safety. *Fort Leavenworth R.R. Co. v. Lowe, supra,* @ 529-531. To rely on this same constitutional provision as a bar to the maintenance of a personal injury lawsuit in Maryland courts based upon the District's negligent operation of its Maryland-based prison for juvenile delinquents is simply to ignore what the provision says, what it has been construed to mean and why it was deemed necessary in the first instance more than 200 years ago. The orderly use of a state's courts to litigate claims against the District in no way unconstitutionally "interferes" with the District's function as the seat of the national government or with its own municipal prison functions.

In light of a more recent case on the question of sovereign immunity, and specifically involving the metropolitan area jurisdictions of Virginia and the District of Columbia, *Biscoe v. Arlington County,* 238 U.S. App. D.C. 206, 738 F.2d 1352 (D.C. Cir. 1984), *cert. denied,* 469 U.S. 1159 (1985), the petitioner's contentions are further weakened. The applicability of sovereign immunity was rejected when a Virginia county was sued for personal injuries in the District of Columbia. Arlington County, Virginia, the defendant, claimed that sovereign immunity barred liability in the District of Columbia courts, that the Full Faith and Credit Clause, U.S. Constitution, Article IV,

Section 1, compelled application of Virginia's immunity law, and that comity principles required the District of Columbia to recognize Virginia's immunity. The United States Court of Appeals for the District of Columbia Circuit rejected all of these contentions, partly on the basis of *Nevada v. Hall, supra.* In evaluating the comity issue, the Circuit Court commented on the District's greater policy interest of not limiting compensation to injured persons, as would be the case if Virginia's immunity were invoked, by recognizing " . . . the special and largely unique interests of the District in *protecting persons* who live in the surrounding suburbs and work in the District. . . . " *Id.*, 738 F.2d at 1361, (emphasis added). Indeed, the *Biscoe* court noted the inequity of limiting a compensatory policy to the physical confines of the District itself by stating,

> [T]o confine the benefits of the . . . rule to the territory ceded by the States of Maryland and Virginia to form the Nation's Capital would be to shun the present reality of the economically and socially integrated greater Metropolitan area. It is commonplace that residents of Maryland are part of the Washington Metropolitan trading area, and that District residents and businesses have an interest in the well-being of these citizens of the Free State. *Id.*

Similarly, other jurisdictions have permitted civil litigation similar to this case where parties were injured as a result of another sovereign's negligence with regard to criminals. In *Peterson v. Texas,* 635 P.2d 241 (Colo.App. 1981), a Colorado State motor vehicle owner sued the

State of Texas for negligence in its supervision of juveniles who were participating in a Texas sponsored rehabilitation program located in Colorado. Colorado's highest court did not recognize Texas' claims of sovereign immunity in a civil damage action brought in Colorado courts for a car stolen by a Texas juvenile while he was in the Colorado rehabilitation program, relying on *Nevada v. Hall, supra.*

To the same effect was a case where Nevada refused to honor Wisconsin's claim of sovereign immunity in *Mainecki v. Second Judicial Dist. Court,* 658 P. 2d 422, *cert. dismissed,* 464 U.S. 806 (1983). A Wisconsin sex offender, while on probation, relocated to Nevada with his probation officer's permission. The sex offender moved in with the plaintiffs, a family with a minor son. Wisconsin authorities failed to warn the plaintiffs about the sex offender who ultimately victimized the minor son. The plaintiffs sued both Wisconsin and the probation officer for their failure to warn them about the sex offender and their failure to properly maintain and supervise his activities. In the face of challenges similar to those raised in *Nevada v. Hall, supra,* and *Biscoe v. Arlington County, supra,* Nevada refused to recognize any form of immunity claimed by its sister state, but proceeded to exercise its jurisdiction over another sovereign.

Petitioner's position here is one which completely ignores the rationale for protection of Maryland residents as stated in *Biscoe,* as well as the factors analyzed in *Peterson, supra,* and *Mainecki, supra,* in addition to those cases decided by this Court. In sum, whether a civil claim in a state court is based on its own legislative enactments, such as its taxing power, or on its judicial ability to

provide a forum for private parties to resolve private disputes, states may exercise jurisdiction over persons and activities on federal enclaves so long as that jurisdiction does not impair the federal government's prerogatives.

B. "EXCLUSIVE JURISDICTION" ENCOMPASSES ONLY EXCLUSIVE LEGISLATIVE AUTHORITY OVER A PARTICULAR AREA AND DOES NOT LIMIT A STATE'S JUDICIAL JURISDICTION TO PROVIDE ITS COURTS AS A FORUM FOR THE RESOLUTION OF VARIOUS LOCAL DISPUTES WHICH OCCUR OR INVOLVE PARTIES LOCATED ON FEDERAL ENCLAVES.

Despite petitioner's attempts to generalize that its oft-repeated phrase of "exclusive jurisdiction" means exclusive political, legislation and *judicial* jurisdiction belonging to the federal government over the Oak Hill enclave, and thus barring this litigation, a state may constitutionally still maintain its *judicial* jurisdiction over federal property. This Court has previously ruled, albeit in the context of subject matter, rather than personal, jurisdiction, that traditional cases involving state law, even arising from activities on federal enclaves, should be decided by state courts:

> The factors generally recommending exclusive federal-court jurisdiction over an area of federal law include the desirability of uniform interpretation, the expertise of federal judges in federal law, and the assumed greater hospitality of federal courts to peculiarly federal claims. These

> factors cannot support exclusive federal jurisdiction over claims whose government rules are borrowed from state law.

Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 482 (1981). See also, 16 U.S.C. § 457, which provides that

> [i]n the case of the death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any State, such right of action shall exist as though the place were under the jurisdiction of the State within whose exterior boundaries such place may be;. . . .

" 'Nothing inherent in exclusive federal sovereignty over a territory precludes a State Court from entertaining a personal injury suit concerning events occurring in the territory and governed by the federal government.' " *In re Air Crash Disaster at Gander, Newfoundland*, 660 F. Supp. 1202, 1207 (W.D. KY. 1987), quoting *Gulf Offshore Co., supra*, @ 482. See also, *Ohio River Contract Co. v. Gordon*, 244 U.S. 68 (1917) (an action for personal injury suffered on a reservation under the exclusive jurisdiction of the United States may be maintained in a state court which has personal jurisdiction over the defendant). As this Court noted in *Gulf Offshore Co., supra*, @ 483, petitioner's argument " . . . confuse[d] the political jurisdiction of a State with its *judicial jurisdiction*." (emphasis added).

The Maryland Legislature, consistent with this Court's prior rulings, and unlike petitioner, did not confuse its political and judicial functions when it enacted its "Long-Arm" statute. By express statutory terms, Maryland has designed its "Long-Arm" *in personam*, judicial

jurisdiction to include federal enclaves and the statute is intended to " . . . extend the personal jurisdiction and venue of courts of the State and the power to serve process of those courts to any person on federal enclaves, reservations or lands within the State to the fullest extent permitted by the Constitution and laws of the United States." Maryland Code (1989) Courts and Judicial Proceedings Article § 6-102(e).

In its ruling below, the Maryland Court of Appeals held that there was no "conflict" between two (2) state statutes, one of which deals with the legislative authority of Maryland over federal enclaves and the other of which confers "Long-Arm" jurisdiction. Moreover, the ruling determined that there was no limitation of *in personam* jurisdiction of Maryland courts over parties regardless of the situs of the dispute. The Court of Appeals decision recognized the clear dichotomy between a state's executive or legislative jurisdiction on one hand and its judicial jurisdiction on the other. *Hansford v. District of Columbia*, 329 Md. 112, 120, 617 A.2d 1057, 1065 (Md. 1993); Pet. App. @ 15a-16a. As the Court stated, "[t]he District's argument, and the position of the Court of Special Appeals, 'confuses the political jurisdiction of a States with its judicial jurisdiction.' *Gulf Offshore v. Mobil Oil Corp.*, 453 U.S. 473, 482 (1981)." Respondents submit that it is now time for recognition of that distinction by petitioner.

Petitioner claims that permitting respondents' case to go to trial will, somehow, interfere with "its discretionary actions in rehabilitating children and youths. . . . " Pet. @ 8. Moreover, petitioner tries to bootstrap its position by raising the specter of more horrible "interference" in its

Virginia prison operations, which are larger than those in Maryland. Pet. @ 9.

In light of all prior judicial decisions involving the scope of permissible state or local governmental acts on and over federal enclaves, petitioner necessarily must *claim* some type of "interference" with its activities in order to create a "constitutional" issue in this case. As even a cursory reading of the decision by the Maryland Court of Appeals discloses, none of petitioner's constitutional interests has been deprived by the maintenance of this lawsuit. Moreover, the facts of this case belie all such claimed "interference" unless a basic fallacy in petitioner's argument is accepted. That fallacy is simple: it must be assumed that a juvenile delinquent, who has been sent to the Oak Hill facility, is at some time *permitted to escape from that facility* by its professional staff as part of a considered and discretionary rehabilitative program for that person. Such a proposition is self-evidently absurd. If such an escape is *not* assumed to be part of an inmate's rehabilitation program, allowing the maintenance of this lawsuit based on the District's negligence in failing to maintain custody of Richardson and further failing to regain custody of him after his successful escape, in no way "interferes" with the District's rehabilitation of juveniles at Oak Hill. Liability attaches, and the District is subject to defend itself, only when its negligence in not maintaining absolute custody and control of a dangerous person produces a legally cognizable injury. Unless there is unconstitutional "interference", Maryland courts may exercise jurisdiction over the District based on its Oak Hill operations, even though on a federal enclave, because there is no *conflict* between the

state's acts and those District of Columbia activities occurring on the enclave. Hence, absent petitioner's "interference" contention, there can be no conflict here sufficient to preclude Maryland courts from providing a forum for respondents to present their tort claims. Thus, there is no constitutional issue to warrant granting the petition.

C. THE DISTRICT OF COLUMBIA, BY ITS OPERATION OF A PRISON IN MARYLAND, IS NOT OPERATING AS THE FEDERAL GOVERNMENT, NOR CARRYING OUT ANY NATIONAL PURPOSE AND, THEREFORE, IS NOT ENTITLED TO ANY IMMUNITY WHICH MAY BE APPLICABLE TO THE FEDERAL GOVERNMENT.

The District of Columbia contends in its petition that, due to its operation of the Oak Hill prison, it is entitled to the same immunity as if it were the federal government and, therefore, is not subject to tort claims in Maryland's courts. Pet. @ 12-17. Indeed, as noted, *supra*, the District here claims *greater* protection from tort claims in Maryland courts than has been accorded when raised by *states*. Contrary to its claims here, the District of Columbia as a municipal corporation, D.C. Code § 1-102(a), does *not* possess immunity greater than a city. Rather, it may sue " . . . and be sued. . . . " just as any other entity and is subject to the same rules that govern procedures between private parties. *Id; Metropo'.tan R.R. v. District of Columbia*, 132 U.S. 1 (1889). Indeed, the District, as a municipal corporation, is responsible for the negligence of its officers having the care of its streets and sidewalks. *District of Columbia v. Woodbury*, 136 U.S. 450 (1890). Additionally,

the District is liable for the intentional torts of its employees since its immunity is based on the common law immunity for municipal governments, not on any sovereignty of the United States government nor upon limits co-extensive with the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq. *Wade v. District of Columbia*, 310 A.2d 857, 861 (D.C. 1973) ("When a tort is made possible only through the abuse of power granted by the government, then the government should be held accountable for the abuse, whether it is negligent or intentional in character."); *Cannon v. United States*, 645 F.2d 1128, 207 U.S. App. D.C. 203 (D.C. Cir. 1981) (Lorton Reformatory of the District of Columbia, located in Virginia, is not subject to any greater control by the federal government than any other District facility or agency and, therefore, is not a federal agency for purposes of Federal Tort Claims Act or 28 U.S.C. § 1346(b)).

While administration of a state law may not interfere with the execution of a national purpose, difficulty occurs only where there is a precise conflict between state and federal rights. In such instances, the supremacy of federal rights supersedes conflicting state rights. *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 103-104 (1940). However, without any actual conflict, or as the District characterizes it, "interference", there is no bar to enforcement of the state's rights. Here, the District, by its operation of a prison, is not the United States, *Cannon v. United States, supra*, and is carrying out *no* national purpose. As recognized by the Maryland Court of Appeals below, the District is not entitled to immunity here on the basis of the Supremacy Clause or cases interpreting it. *Hansford v. District of Columbia, supra*, @ 1067-1068; Pet. App. @

20a-21a. Therefore, this last contention provides no better basis for granting the petition than do those addressed above.

CONCLUSION

Because the Maryland Court of Appeals ruling correctly construed two (2) state statutes concerning the "Long-Arm" *in personam* jurisdiction of its own courts, petitioner was deprived of no constitutional interest and this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

GARY M. SIDELL
1717 Massachusetts Ave., N.W.
Suite 100
Washington, D.C. 20036
(202) 783-0060
(Counsel of Record)

LESLIE G. FEIN
CHRISTOPHER G. HOGE
CROWLEY, HOGE & FEIN
1717 Massachusetts Ave., N.W.
Suite 100
Washington, D.C. 20036
(202) 483-2900

Counsel for Respondents

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In the

Supreme Court of the United States

OCTOBER TERM, 1992

DISTRICT OF COLUMBIA,
Petitioner,

v.

THOMAS HANSFORD, *et ux.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

REPLY TO BRIEF IN OPPOSITION

JOHN PAYTON,
Corporation Counsel

CHARLES L. REISCHEL,
Deputy Corporation Counsel
Appellate Division

*LUTZ ALEXANDER PRAGER,
Assistant Deputy Corporation Counsel

Office of the Corporation Counsel
One Judiciary Square
441 Fourth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 727-6252

**Counsel of Record*

TABLE OF CONTENTS

	Page
1. The Issue Presented Was Raised Below.	1
2. If Service on the Attorney General of Maryland Was Required, Failure of Service Is Curable and Should Not Be a Basis for Denying Review.	3
3. The Issue Is Constitutionally Significant.	3
Conclusion	4

TABLE OF AUTHORITIES

CASES

Dandridge v. Williams, 397 U.S. 471 (1970)	2
Dewey v. City of Des Moines, 173 U.S. 193 (1899)	3
Grether v. Wright, 75 F. 742 (6th Cir. 1896)	3-4
New York ex. rel. Bryant v. Zimmerman, 278 U.S. 63 (1928)	2
O'Donoghue v. United States, 289 U.S. 516 (1933)	3-4
Robeson v. State, 285 Md. 498, 403 A.2d 1221 (1979), *cert. denied*, 444 U.S. 1021 (1980)	2
Street v. New York, 394 U.S. 576 (1969)	2
United States v. Adams, 383 U.S. 39 (1966)	3
Yee v. City of Escondido, 503 U.S. __, 112 S. Ct. 1522 (1992)	3

STATUTES

U.S. Const. Art. I, § 8, Cl. 17	*passim*
Act of Feb. 28, 1923, 42 Stat. 1360, ch. 148.	*passim*
28 U.S.C. § 2403(b)	3, 5

OTHER AUTHORITIES

Sup. Ct. R. 29.4(c)	1, 3

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The brief in opposition raises two procedural matters that were not addressed in the petition and that warrant short responses: that (1) the issue presented by the petition had not been raised in the trial or intermediate appellate courts and had not been addressed by the Maryland Court of Appeals (opp. at 6); and (2) Sup. Ct. Rule 29.4(c) requires the petition to have been served on the attorney general of Maryland. *Id.*, n. 3. We also respond to assertions minimizing the issue's constitutional significance.

1. THE ISSUE PRESENTED WAS RAISED BELOW. The contention that the District had not presented the issue raised by the petition in the state trial and intermediate courts, even if true, has no bearing on this Court's consideration of the issue if it was properly raised in the Maryland Court of Appeals.[1] Maryland practice permits appellees to present

[1] In fact, however, as the Maryland Court of Special Appeals noted, in that court the District had defended dismissal of the action on the ground that the alleged negligence occurred on "a federal enclave, over which the District and the United States have been ceded exclusive jurisdiction." A. 3b; footnote omitted.

arguments in support of judgment, whether or not raised below. *See*, A. 7b, citing *Robeson v. State*, 285 Md. 498, 502, 403 A.2d 1221, 1223 (1979), *cert. denied*, 444 U.S. 1021 (1980). This Court has a similar practice. *See*, *Dandridge v. Williams*, 397 U.S. 471, 475 n. 6 (1970).

There is no doubt that both the District's answer to the Hansfords' petition for review and its brief in the Maryland Court of Appeals addressed the issue at length, relying on Article I, § 8, Cl. 17, and the 1923 congressional statute.[2] In turn, that Court discussed it in the final portions of its opinion (A. 19a-22a), characterizing it as a Supremacy Clause question even though the decisions which it distinguished were decisions involving Article I, § 8, Cl. 17. *See id.* at 19a-21a. When the record shows that the issue was presented below, it has been preserved for review by this Court. *See Street v. New York*, 394 U.S. 576, 581-585 (1969); *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928).

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[2] Opening sentences of three sections of the District's brief encapsulate arguments made in succeeding pages. The first stated: "Under constitutional principles, state instrumentalities cannot use their powers in ways that could 'interfere with the essential and necessary functions of the federal government' on federally-owned land * * *." Br. at 15. The second stated: "Congress has authorized the District to acquire land in neighboring states and to title it in the name of the United States precisely in order [to] protect the District from assertions of state jurisdiction." *Id.* at 20. The third stated: "For the reasons outlined in the preceding sections of this Argument, it is inconsistent with the Constitution (and with unmistakable congressional intent) to make the District answerable in the courts of another state for its governmental activities on federal land." *Id.* at 26. The brief's table of contents reveals how much attention the brief devoted to the issue:

I. The District of Columbia Is Immune from Suit and Not Subject to the Jurisdiction of Maryland Courts for Its Activities on Federal Land Acquired for Its Use at the Direction of Congress with the Acquiescence of the State. 9

* * *

C. The constitutional basis for immunity 15

D. Interference with governmental activities at Oak Hill . . . . . 20-[25]

Having made the federal claim in the Maryland courts, the District is free to "make any argument in support of that claim" and is "not limited to the precise arguments [it] made below." *Yee v. City of Escondido*, 503 U.S. __, 112 S. Ct. 1522, 1532 (1992); *see Dewey v. City of Des Moines*, 173 U.S. 193, 198 (1899).

2. IF SERVICE ON THE ATTORNEY GENERAL OF MARYLAND WAS REQUIRED, FAILURE OF SERVICE IS CURABLE AND SHOULD NOT BE A BASIS FOR DENYING REVIEW. The petition does not challenge the constitutionality of Maryland laws. Rather, it asserts that Maryland laws conferring jurisdiction are preempted by Article I, § 8, Cl. 17, as implemented by the 1923 congressional statute,[3] to the extent that those laws would otherwise apply to the District. At most, the District challenges the decision below as an unconstitutional *application* of state jurisdictional statutes to the District. We do not regard either characterization of the issue presented as triggering Rule 29.4(c).

If failure to serve was error, however, it can be corrected. The Court has power to certify the question to the Maryland attorney general under 28 U.S.C. § 2403(b)[4] or to order the District to serve the petition. Noncompliance with Rule 29.4(c), if any, should not affect the Court's consideration of the petition on its merits. *Cf. United States v. Adams*, 383 U.S. 39, 42 (1966) (service rule is not jurisdictional and not a basis for denying a writ where "no prejudice resulted and the failure was inadvertent").

3. THE ISSUE IS CONSTITUTIONALLY SIGNIFICANT. Although the brief in opposition is correct that the issue presented by the petition involves a localized congressional exercise of power, that is true of all Clause 17 jurisprudence. But that scarcely makes Clause 17 inconsequential. As the Court has noted, " '[t]he object of the grant of exclusive legislation over the [D]istrict was * * * national in the

[3] Act of Feb. 28, 1923, 42 Stat. 1360, ch. 148, A. 2-3.

[4] The text of 28 U.S.C. § 2403(b) is reproduced *infra*, at 5.

highest sense * * *.' " *O'Donoghue v. United States*, 289 U.S. 516, 539 (1933), quoting Judge (later Chief Justice) Taft in *Grether v. Wright*, 75 F. 742, 757 (6th Cir. 1896); brackets added.

At issue is whether Article I, § 8, Cl. 17, gives Congress power to place the District's governmental activities on a federal enclave (over which the state has ceded all jurisdiction) beyond control by state instrumentalities. That was surely Congress's intent in 1923 when it had Oak Hill titled in the name of the United States and made the District "agent[ ] of the United States." For the first time, a state court has held that Congress cannot achieve that goal. That holding merits further review.

CONCLUSION

The petition should be granted.

Respectfully submitted.

JOHN PAYTON,
Corporation Counsel

CHARLES L. REISCHEL,
Deputy Corporation Counsel
Appellate Division

*LUTZ ALEXANDER PRAGER,
Assistant Deputy Corporation Counsel

Office of the Corporation Counsel
One Judiciary Square
441 Fourth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 727-6252

**Counsel of Record*

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STATUTE

28 U.S.C. § 2403(b):

> In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. * * *